

State Law Library of Montana
MONTANA LEGISLATIVE HISTORY

Chapter 272 Session L 2003
Bill House 220 Senate _____

History and final status sheet x
Introduced bill x
Fiscal note x
Third reading bill x
Final version of bill x

House Committee on Judiciary

Hearing date(s)* 1/20
1/22 1/28

Executive action (vote) date(s)* 1/28

Comm. Report 1/28

Floor 2nd reading & vote 2/1; 4/7

Floor 3rd reading & vote 2/4; 4/8

Senate Committee on Judiciary

Hearing date(s)* _____

Executive action (vote) date(s)* _____

Comm. Report _____

Floor 2nd reading & vote 3/22

Floor 3rd reading & vote 3/24

Conference or Free Conference Comm. _____ Yes x No

Hearing date(s)* _____

Executive action (vote) date(s)* _____

* Includes minutes, exhibits, roll call, visitors register, and vote sheet if available.

Did this bill originate in an interim committee? _____ Yes x No

Committee _____ Report _____

NOTES:



Compiled by: SJL

Date: June 10, 2015

HOUSE BILLS AND RESOLUTIONS

301

3/31	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/07	2ND READING SENATE AMENDMENTS CONCURRED	99	0
4/08	3RD READING PASSED AS AMENDED BY SENATE	98	2
4/08	SENT TO ENROLLING		
4/10	RETURNED FROM ENROLLING		
4/11	SIGNED BY SPEAKER		
4/11	SIGNED BY PRESIDENT		
4/12	TRANSMITTED TO GOVERNOR		
4/21	RETURNED WITH GOVERNOR'S PROPOSED AMENDMENTS		
4/23	2ND READING GOVERNOR'S PROPOSED AMENDMENTS CONCURRED	100	0
4/24	3RD READING GOVERNOR'S PROPOSED AMENDMENTS CONCURRED	98	2
4/24	TRANSMITTED TO SENATE FOR CONSIDERATION OF GOVERNOR'S PROPOSED AMENDMENTS		
4/25	2ND READING GOVERNOR'S PROPOSED AMENDMENTS CONCURRED ON VOICE VOTE	46	0
4/26	3RD READING GOVERNOR'S PROPOSED AMENDMENTS CONCURRED	49	0
4/26	RETURNED TO HOUSE CONCURRED IN GOVERNOR'S PROPOSED AMENDMENTS		
4/26	SENT TO ENROLLING		
4/30	RETURNED FROM ENROLLING		
5/01	SIGNED BY SPEAKER		
5/01	SIGNED BY PRESIDENT		
5/02	TRANSMITTED TO GOVERNOR		
5/05	SIGNED BY GOVERNOR		
5/05	CHAPTER NUMBER ASSIGNED		
	CHAPTER NUMBER 560		
	EFFECTIVE DATE: 1/01/2004 - ALL SECTIONS		

HB 219 INTRODUCED BY BRUEGGEMAN

LC1223 DRAFTER: PETESCH

COUNTY OFFICE RENT FREEZE FOR DEPARTMENT OF REVENUE

BY REQUEST OF OFFICE OF BUDGET AND PROGRAM PLANNING & DEPARTMENT OF REVENUE

12/03	FISCAL NOTE NEEDED		
12/27	INTRODUCED		
1/02	FISCAL NOTE REQUESTED		
1/03	REFERRED TO LOCAL GOVERNMENT		
1/07	REFERRED TO APPROPRIATIONS		
1/10	FISCAL NOTE RECEIVED		
1/13	FISCAL NOTE PRINTED		
1/15	HEARING		
1/20	TABLED IN COMMITTEE		
3/29	MISSSED DEADLINE FOR APPROPRIATION BILL TRANSMITTAL		

HB 220 INTRODUCED BY LASZLOFFY

LC0115 DRAFTER: MACMASTER

REVISE RESTITUTION LAWS

BY REQUEST OF DEPARTMENT OF CORRECTIONS

12/27	INTRODUCED		
1/02	FISCAL NOTE REQUESTED		
1/03	REFERRED TO JUDICIARY		
1/09	FISCAL NOTE RECEIVED		
1/10	FISCAL NOTE PRINTED		
1/20	HEARING		
1/28	COMMITTEE EXECUTIVE ACTION—BILL PASSED AS AMENDED	16	2
1/29	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/01	2ND READING PASSED AS AMENDED	96	4
2/04	3RD READING PASSED	93	2
	TRANSMITTED TO SENATE		
2/05	REFERRED TO JUDICIARY		
2/27	REVISED FISCAL NOTE REQUESTED		
3/17	HEARING		
3/19	COMMITTEE EXECUTIVE ACTION—BILL CONCURRED	9	0
3/19	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/22	2ND READING CONCURRED ON VOICE VOTE	45	0
3/24	3RD READING CONCURRED	48	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/07	2ND READING SENATE AMENDMENTS CONCURRED	97	2
4/08	3RD READING PASSED AS AMENDED BY SENATE	96	4
4/08	SENT TO ENROLLING		

4/09 SIGNED BY SPEAKER
 4/09 SIGNED BY PRESIDENT
 4/09 RETURNED FROM ENROLLING
 4/09 TRANSMITTED TO GOVERNOR
 4/10 SIGNED BY GOVERNOR
 4/10 CHAPTER NUMBER ASSIGNED
 CHAPTER NUMBER 272
 EFFECTIVE DATE: 10/01/2003 - ALL SECTIONS

HB 221 INTRODUCED BY KAUFMANN

LC1032 DRAFTER: STERNBERG

REVISE FISH AND GAME COMMISSION REQUIREMENTS

12/27 INTRODUCED
 1/03 REFERRED TO FISH, WILDLIFE AND PARKS
 1/23 HEARING
 2/18 TABLED IN COMMITTEE
 2/28 MISSED DEADLINE FOR GENERAL BILL TRANSMITTAL

HB 222 INTRODUCED BY PARKER

LC0114 DRAFTER: MACMASTER

DOC SENTENCING REVISIONS — REVISE SUSPENDED SENTENCE LAWS

BY REQUEST OF DEPARTMENT OF CORRECTIONS

12/27	INTRODUCED		
1/02	FISCAL NOTE REQUESTED		
1/03	REFERRED TO JUDICIARY		
1/10	FISCAL NOTE RECEIVED	0	
1/14	FISCAL NOTE PRINTED		
1/21	HEARING		
2/14	COMMITTEE EXECUTIVE ACTION—BILL PASSED AS AMENDED	17	0
2/18	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/19	REVISED FISCAL NOTE REQUESTED		
2/20	REVISED FISCAL NOTE RECEIVED		
2/21	REVISED FISCAL NOTE PRINTED		
2/22	2ND READING PASSED	96	1
2/24	3RD READING PASSED	99	0
2/26	TRANSMITTED TO SENATE		
3/13	REFERRED TO JUDICIARY		
3/21	COMMITTEE EXECUTIVE ACTION—BILL CONCURRED AS AMENDED	9	0
3/21	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/25	2ND READING CONCURRED ON VOICE VOTE	50	0
3/26	3RD READING CONCURRED	50	0
4/07	RETURNED TO HOUSE WITH AMENDMENTS		
4/08	2ND READING SENATE AMENDMENTS CONCURRED	96	1
4/08	3RD READING PASSED AS AMENDED BY SENATE	98	2
4/09	SENT TO ENROLLING		
4/09	RETURNED FROM ENROLLING		
4/10	SIGNED BY SPEAKER		
4/10	SIGNED BY PRESIDENT		
4/11	TRANSMITTED TO GOVERNOR		
4/17	SIGNED BY GOVERNOR		
4/18	CHAPTER NUMBER ASSIGNED		
	CHAPTER NUMBER 386		
	EFFECTIVE DATE: 4/17/2003 - ALL SECTIONS		

HB 223 INTRODUCED BY LAWSON

LC0364 DRAFTER: MITCHELL

AUTHORIZE STATE LAND SALE PROCEEDS FOR LAND PURCHASES

BY REQUEST OF DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION & BOARD OF LAND COMMISSIONERS

7/31	FISCAL NOTE NEEDED		
12/27	INTRODUCED		
1/02	FISCAL NOTE REQUESTED		
1/03	REFERRED TO NATURAL RESOURCES		
1/10	FISCAL NOTE RECEIVED		
1/13	FISCAL NOTE PRINTED		
1/13	HEARING		
1/29	COMMITTEE EXECUTIVE ACTION—BILL PASSED AS AMENDED	13	5
1/30	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/03	2ND READING PASSED AS AMENDED	79	21

HOUSE BILL NO. 220

INTRODUCED BY J. LASZLOFFY

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING THE LAWS PROVIDING FOR RESTITUTION BY CRIMINALS TO ADDRESS COURT OPINIONS; ENSURING THAT THE DUTY TO PAY CONTINUES TO EXIST UNTIL RESTITUTION IS FULLY PAID; ALLOWING THE STATE TO CONTRACT WITH A PRIVATE ENTITY FOR THE COLLECTION OF RESTITUTION PAYMENTS; PROVIDING FOR FULL REPLACEMENT VALUE RESTITUTION; ADDING METHODS TO ENSURE PAYMENT OF RESTITUTION; CHANGING PROCEDURES FOR SUPERVISION OF THE PAYMENT OF RESTITUTION; AMENDING SECTIONS 46-18-201, 46-18-241, 46-18-242, 46-18-243, 46-18-244, 46-18-245, AND 53-30-132, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition of sentence, except as otherwise specifically provided by statute, for a period:

(i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

(ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.

(b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(2) Whenever a person has been found guilty of an offense upon a verdict of

guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.

(3) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may impose a sentence that may include:

(a) a fine as provided by law for the offense;

(b) payment of costs, as provided in 46-18-232, or payment of costs of court-appointed counsel as provided in 46-8-113;

(c) a term of incarceration at a county detention center or state prison, as provided in Title 45, for the offense;

(d) commitment of:

(i) an offender not referred to in subsection (3)(d)(ii) to the department of corrections, with a recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years of the commitment to the department of corrections must be suspended; or

(ii) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in an appropriate correctional facility or program;

(e) with the approval of the facility or program, placement of the offender in a community corrections facility or program as provided in 53-30-321;

(f) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, placement of the offender in a prerelease center or prerelease program for a period not to exceed 1 year;

(g) chemical treatment of sex offenders, as provided in 45-5-512, if applicable, that is paid for by and for a period of time determined by the department of corrections, but not exceeding the period of state supervision of the person; or

(h) any combination of subsections (2) through (3)(g).

(4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the sentencing judge may impose upon the offender any reasonable restrictions or conditions during the period of the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) may include but are not limited to:

- (a) limited release during employment hours as provided in 46-18-701;
- (b) incarceration in a detention center not exceeding 180 days;
- (c) conditions for probation;
- (d) payment of the costs of confinement;
- (e) payment of a fine as provided in 46-18-231;
- (f) payment of costs as provided in 46-18-232 and 46-18-233;
- (g) payment of costs of court-appointed counsel as provided in 46-8-113;
- (h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;
- (i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;
- (j) community service;
- (k) home arrest as provided in Title 46, chapter 18, part 10;
- (l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;
- (m) with the approval of the department of corrections and with a signed statement from an offender that the offender's participation in the boot camp incarceration program is voluntary, an order that the offender complete the boot camp incarceration program established pursuant to 53-30-403;
- (n) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society; or
- (o) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(n).

(5) In addition to any other penalties imposed pursuant to subsection (1), if

a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that the a victim of the offense, as defined in 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the sentence is deferred or suspended.

(6) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(7) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise."

Section 2. Section 46-18-241, MCA, is amended to read:

"46-18-241. Condition of restitution. (1) As provided in 46-18-201, a sentencing court shall, as part of the sentence, require an offender to make full restitution to any victim of the offense who has sustained pecuniary loss as a result of the offense, including a person suffering an economic loss as a result of the crime. The duty to pay full restitution under the sentence remains with the offender until full restitution is paid or the offender dies, whichever occurs first, and is a condition of any probation or parole. The offender remains under state supervision for the purposes of payment and collection of restitution until full restitution is paid, regardless of whether any period of incarceration, probation, or parole imposed upon the offender has expired.

(2) (a) The court shall require the offender to pay the cost of supervising the payment of restitution, as provided in 46-18-245, if the offender is able to pay, by paying an amount equal to 10% of the amount of restitution ordered, but not less than \$5.

(b) A felony offender shall pay the restitution and cost of supervising the payment of restitution to the department of corrections until the offender has fully paid the restitution and the cost of supervising the payment of restitution. The department shall pay the restitution to the person or entity to whom the court ordered restitution to be paid. The department may contract with a government agency or private

entity for the collection of the payments for restitution and the cost of collecting the payments for restitution during the period following state supervision or state custody of the offender. The department shall adopt rules to implement this subsection (2)(b).

(c) ~~Payment~~ In a misdemeanor case, payment of restitution and of the cost of supervising the payment of restitution must be made to the court, which until the offender has fully paid the restitution and the cost of supervising the payment of restitution. The court shall disburse the money to the entity employing the person ordered to supervise restitution under 46-18-245, which shall disburse the restitution to the person or entity to whom the court ordered restitution to be paid.

(3) If at any time the court finds that, because of circumstances beyond the offender's control, the offender is not able to pay any restitution, the court may order the offender to perform community service during the time that the offender is unable to pay. The offender must be given a credit against restitution due at the rate of the hours of community service times the state minimum wage in effect at the time that the community service is performed."

Section 3. Section 46-18-242, MCA, is amended to read:

"46-18-242. Investigation and report of victim's loss. (1) Whenever the court believes that a victim ~~of the offense~~ may have sustained a pecuniary loss ~~as a result of the offense~~ or whenever the prosecuting attorney requests, the court shall order the probation officer, restitution officer, or other designated person to include in the presentence investigation and report:

(a) ~~documentation~~ a list of the offender's ~~financial resources and future ability to pay restitution assets~~; and

(b) ~~documentation of~~ an affidavit that specifically describes the victim's pecuniary loss and the replacement value in dollars of the loss, submitted by the victim ~~or by the board of crime control if compensation for the victim's loss has been reimbursed by the state.~~

(2) When a presentence report is not authorized or requested, the court may receive evidence of ~~the offender's ability to pay and~~ the victim's loss at the time

of sentencing."

Section 4. Section 46-18-243, MCA, is amended to read:

"46-18-243. Definitions. For purposes of 46-18-241 through 46-18-249, the following definitions apply:

(1) "Pecuniary loss" means:

(a) all special damages, but not general damages, substantiated by evidence in the record, that a person could recover against the offender in a civil action arising out of the facts or events constituting the offender's criminal activities, including without limitation ~~the money equivalent of loss resulting from property taken, destroyed, broken, or otherwise harmed~~ and out-of-pocket losses, such as medical expenses, loss of income, expenses reasonably incurred in obtaining ordinary and necessary services that the victim would have performed if not injured, expenses reasonably incurred in attending court proceedings related to the commission of the offense, and reasonable expenses related to funeral and burial or crematory services; and

(b) the full replacement cost of property taken, destroyed, harmed, or otherwise devalued as a result of the offender's criminal conduct;

(c) future medical expenses that the victim can reasonably be expected to incur as a result of the offender's criminal conduct, including the cost of psychological counseling, therapy, and treatment; and

~~——(b)(d)~~ reasonable out-of-pocket expenses incurred by the victim in filing charges or in cooperating in the investigation and prosecution of the offense.

(2) (a) "Victim" means:

(i) a person who suffers loss of property, bodily injury, or death as a result of:

(A) the commission of an offense;

(B) the good faith effort to prevent the commission of an offense; or

(C) the good faith effort to apprehend a person reasonably suspected of committing an offense;

(ii) the estate of a deceased or incapacitated victim or a member of the immediate

family of a homicide victim;

(iii) a governmental entity that suffers loss of property as a result of the commission of an offense in this state or that incurs costs or losses during the commission or investigation of an escape, as defined in 45-7-306, or during the apprehension or attempted apprehension of the escapee; ~~or~~

(iv) an insurer or surety with a right of subrogation to the extent it has reimbursed the victim of the offense for pecuniary loss;

(v) the crime victims compensation and assistance program established under Title 53, chapter 9, part 1, to the extent that it has reimbursed a victim for pecuniary loss; and

(vi) any person or entity whom the offender has voluntarily agreed to reimburse as part of a voluntary plea bargain.

(b) Victim does not include a person who is accountable for the crime or accountable for a crime arising from the same transaction."

Section 5. Section 46-18-244, MCA, is amended to read:

"46-18-244. Type and time of payment -- defenses -- ensuring payment. (1) The court shall specify the total amount ~~to be paid and the method and time of payment~~ and may permit payment in installments of restitution that the offender shall pay.

(2) ~~In determining the amount, method, and time of each installment payment, the court shall consider the financial resources and future ability of the offender to pay. The court shall provide for payment to a victim of the full amount of the pecuniary loss caused by the offense. The~~ In the proceeding for the determination of the amount of restitution, the offender may assert any defense that the offender could raise in a civil action for the loss sought to be compensated by the restitution order for which the victim seeks compensation.

(3) In addition to other methods of payment, the court may order one or more of the following in order to satisfy the offender's restitution obligation:

(a) forfeiture and sale of the offender's assets under the provisions of Title 25, chapter 13, part 7, unless the court finds, after notice and an opportunity for the offender to be heard, that the assets are reasonably necessary for the offender

to sustain a living or support the offender's dependents or unless the state determines that the cost of forfeiture and sale would outweigh the amount available to the victim after sale. If the proceeds of sale exceed the amount of restitution ordered and the costs of forfeiture and sale, any remaining amount must be returned to the offender.

(b) return of any property to the victim;

~~(c) payment of up to one-third of the offender's prison earnings.~~

(4) With the consent of the victim and in the discretion of the court, an offender may be ordered to make restitution in services to the victim in lieu of money or to make restitution to a person designated by the victim, if that person provided services to the victim as a result of the offense.

(5) After a prosecution is commenced and upon petition of the prosecutor, the court may grant a restraining order or injunction, require a satisfactory bond, or take other action if the court finds that the restraining order or injunction, bond, or other action is necessary to preserve property or assets that could be used to satisfy an anticipated restitution order. A hearing must be held on the petition, and any person with an interest in the property is entitled to be heard.

(6) For a felony offense:

(a) during any period that the offender is incarcerated, the department of corrections shall take a percentage, as set by department rule, of any money in any account of the defendant administered by the department and use the money to satisfy any existing restitution obligation;

(b) at the beginning of any period during which the offender is not incarcerated, the offender shall sign a statement allowing any employer of the offender to garnish up to 25% of the offender's compensation and give the garnished amounts to the department of corrections to be used by the department to satisfy any existing restitution obligation; and

(c) during any period that the defendant is on probation or parole, the probation and parole officer shall set a monthly restitution payment amount by dividing the total amount of unpaid restitution by the number of remaining months of probation or parole. The probation and parole officer may adjust the monthly payment up or down by a maximum of 10%, depending on the offender's circumstances.

(7) The court shall give the department of revenue a copy of the order to pay restitution. If full restitution has not been paid, the department of revenue shall intercept any state tax refunds and any federal tax refunds, as provided by law, due the offender and transfer the money to the department of corrections for a felony offense and to the sentencing court for a misdemeanor offense for disbursement to the victim."

Section 6. Section 46-18-245, MCA, is amended to read:

"46-18-245. Supervision of payment. The ~~For a felony offense, the court shall order the department of corrections to supervise the payment of restitution. For a misdemeanor offense, the court may order a~~ ~~probation officer,~~ restitution officer, or other designated person to supervise the making of restitution and to report to the court any default in payment. If the victim of a misdemeanor has received compensation under Title 53, chapter 9, the court may also order an employee of the ~~board of crime control~~ office of victims services, as defined in 53-9-103, to supervise the making of restitution and to report to the court any default in payment."

Section 7. Section 53-30-132, MCA, is amended to read:

"53-30-132. Inmate participation and status in prison work programs -- prison industries and vocational training program -- wages and benefits. (1) The department of corrections may:

(a) establish prison industries that will result in the production or manufacture of products and the rendering of services that may be needed by any department or agency of the state or any political subdivision of the state, by any agency of the federal government, by any other states or their political subdivisions, or by nonprofit organizations and that will assist in the rehabilitation of inmates in institutions;

(b) obtain federal certification of specific prison industries programs in order to gain access to interstate markets for prison industries products;

(c) contract with private industry for the sale of goods or components manufactured or produced in shops under its jurisdiction and for the employment of inmates in federally certified prison industries programs;

(d) print catalogs describing goods manufactured or produced by prison industries and distribute the catalogs;

(e) fix the sale price for goods produced or manufactured by prison industries. Prices may not exceed prices existing in the open market for goods of comparable quality.

(f) require a correctional facility to purchase needed goods from other correctional facilities;

(g) provide for the repair and maintenance of property and equipment of institutions by inmates;

(h) provide for the removal of graffiti from property and equipment of institutions and the removal of litter from the property of institutions, public roads, and public parks by inmates;

(i) provide for construction projects, up to the aggregate sum of \$200,000 for each project, performed by inmates. The department of administration may:

(i) exempt projects authorized by this subsection from the provisions of Title 18, chapter 2, relating to construction, public bidding, bonding, or contracts; and

(ii) exempt inmates who provide labor for those projects from the labor and wage requirements of Title 18, chapter 2, part 4. Inmates providing labor for projects under this subsection must be paid a rate of pay as provided in subsection (5).

(j) provide for the repair and maintenance by prison industries of furniture and equipment of any state agency;

(k) provide for the manufacture by prison industries of motor vehicle license plates and other related articles;

(l) sell manufactured or agricultural products and livestock on the open market;

(m) provide for the manufacture by prison industries of highway, road, and street marking signs for the use of the state or any of its political subdivisions, except when the manufacture of the signs is in violation of a collective bargaining contract;

(n) pay an inmate from receipts from the sale of products produced or manufactured or services rendered in a program in which the inmate is working;

(o) collect 15% of the ~~net~~ gross wages paid to an inmate employed in a federally certified prison industries program, to be deposited in a department restitution fund and used to satisfy any unpaid restitution obligation of the inmate or, if the obligation

has been fully paid or no restitution was ordered, for transfer quarterly to the crime victims compensation and assistance program in the department of justice for deposit in the state general fund as provided in Title 53, chapter 9, part 1; and

(p) collect from an inmate employed in a federally certified prison industries program charges for room and board consistent with charges established by the director for inmates assigned to prerelease centers.

(2) Except as provided in subsection (3), furniture made in the prison may be purchased by state agencies in accordance with the procurement provisions under Title 18, chapter 4. All other prison-made furniture may be sold only through licensed wholesale or retail furniture outlets or through export firms for sale to international markets.

(3) Any state institution, facility, or program operated by the department of corrections may purchase prison-made furniture without complying with the procurement provisions under Title 18, chapter 4.

(4) While engaged in on-the-job training and production, inmates not employed in a federally certified prison industries program may be paid a wage in accordance with subsection (5). Inmates employed in a federally certified prison industries program must be paid as provided in subsection (5).

(5) (a) Except as provided for in subsection (5)(b), payment for the performance of work may be based on the following criteria:

- (i) knowledge and skill;
- (ii) attitude toward authority;
- (iii) physical effort;
- (iv) responsibility for equipment and materials; and
- (v) regard for safety of others.

(b) The maximum rate of pay must be determined by the appropriation established for the program, except that an inmate employed in a federally certified prison industries program must be paid at a rate not less than the rate paid for similar work in the locality where the inmate performs the work.

(6) Premiums for workers' compensation and occupational disease coverage for federally certified prison industries programs must be paid by the prison industries

program or by the department of corrections. If the department of corrections pays the premium, reimbursement for premium payments for workers' compensation and occupational disease coverage must be made to the department of corrections by the private company contracting with the federally certified prison industries program for services and products.

(7) Inmates not working in a federally certified prison industries training program are not employees, either public or private, and employment rights accorded other classes of workers do not apply to the inmates. Inmates working in a federally certified prison industry program are entitled to coverage and benefits as provided in 39-71-744.

(8) Able-bodied persons committed to a state prison as adult offenders must be required to perform work as provided for by the department of corrections, including the manufacture of products or the rendering of services. In order to ensure the public safety, the department may secure inmates performing work."

NEW SECTION. **Section 8. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to offenders who have an unpaid restitution obligation on [the effective date of this act].

- END -

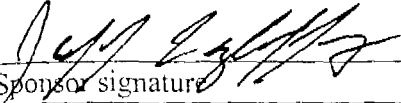
FISCAL NOTE

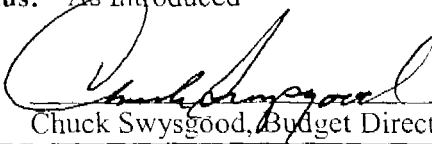
Bill #: HB0220

Title: Revise restitution laws

Primary Sponsor: Laszloffy, J

Status: As Introduced

 1-10-03
Sponsor signature Date

 1/8/03
Chuck Swysgood, Budget Director Date

Fiscal Summary

	<u>FY 2004 Difference</u>	<u>FY 2005 Difference</u>
Expenditures:		
State Special Revenue	\$98,661	\$89,598
Revenue:		
State Special Revenue	\$182,764	\$182,764
Net Impact on General Fund Balance:	\$0	\$0

- | | |
|---|--|
| ☐ Significant Local Gov. Impact | ☐ Technical Concerns |
| ☐ Included in the Executive Budget | ☐ Significant Long-Term Impacts |
| ☐ Dedicated Revenue Form Attached | ☒ Needs to be included in HB 2 |

Fiscal Analysis

ASSUMPTIONS:

1. The counties collected \$1,827,638 in restitution during FY 2002.
2. Ten percent of this total is \$182,764.
3. There will be 3.00 FTE (grade 11) required to process restitution paper work. The cost for salary and benefits for each FTE will be \$29,866 each year and start-up operating expenses for each FTE will be \$3,021 in FY 2004.
4. All fiscal impacts listed in this note will affect the Department of Correction's Community Corrections Program (02).
5. Expenses and revenues will be recorded in the current state special revenue restitution account.

Fiscal Note Request HB0220, As Introduced
(continued)

FISCAL IMPACT:

	FY 2004 <u>Difference</u>	FY 2005 <u>Difference</u>
FTE	3.00	3.00
<u>Expenditures:</u>		
Personal Services	\$89,598	\$89,598
Operating Expenses	<u>9,063</u>	<u>0</u>
TOTAL	\$98,661	\$89,598
<u>Funding of Expenditures:</u>		
State Special Revenue (02)	\$98,661	\$89,598
<u>Revenues:</u>		
State Special Revenue (02)	\$182,764	\$182,764
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u>		
State Special Revenue (02)	\$84,103	\$93,166

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

The total loss of revenue to counties would be \$182,764 per year, but there should also be a reduction in expenditures.

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on January 20, 2003 at
8 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. George Everett (R)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Michael Lange (R)
Rep. Bruce Malcolm (R)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. John Parker (D)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Scott Sales (R)
Rep. Ron Stoker (R)
Rep. Bill Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Lisa Swanson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion
are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 220, 1/20/2003; HB 14,
1/20/2003; HB 40, 1/20/2003; HB
166, 1/20/2003; HB 170, 1/20/2003;
HB 171, 1/20/2003

{Tape: 1; Side: A; Approx. Time Counter: 85 - 107}

Closing by Sponsor:

REP. SHOCKLEY closed on HB 14 stating that this should be changed. He explained this is not a perfect fix but that it is a good start and that a person should have one fair jury trial.

{Tape: 1; Side: A; Approx. Time Counter: 110 - 130}

HEARING ON HB 220

Sponsor: REP. JEFF LASZLOFFY, HD 22, Laurel

Opening Statement by Sponsor:

REP. LASZLOFFY opened on HB 220 stating it seeks to overhaul Montana's victim restitution statutes. He explained this bill would help to ensure a defendant's duty to pay by giving the state additional tools to recover restitution on behalf of victims.

{Tape: 1; Side: A; Approx. Time Counter: 131 - 171}

Proponents' Testimony:

Diana Koch, Chief Legal Counsel, Department of Corrections (DOC), supported HB 220. Ms. Koch stated that section 1 of the bill corrects a drafting error made in the 1999 session. The Court pointed out the drafting error in State v. Horton, stating the Legislature did not amend the subsection on restitution. Hence, under the current law, a district court can only require restitution in cases involving deferred imposition of a sentence, not in cases involving suspended execution of a sentence. Ms. Koch stated section 2 of the bill clarifies that the obligation to pay remains with the offender until it is paid or the offender dies. She stated section 2 also has the DOC, instead of clerks of court, collect felony restitution. Sections 3 and 4 allow the prosecution and defense to negotiate and plea bargain restitution. She concluded, stating that Sections 5 through 7 explain mechanisms for collecting restitution.

{Tape: 1; Side: A; Approx. Time Counter: 172 - 265}

EXHIBIT(juh11a01)

Steve Hollingshead, Laurel, supported HB 220. He stated his family lost their child in an accident involving a drunk driver. He stated their savings account was drained as the driver did not have insurance. He stated although the court ordered the defendant to pay \$18,000 in restitution, he never did pay the victims.

{Tape: 1; Side: A; Approx. Time Counter: 266 - 322}

Leo Gallagher, County Attorney's Association, Helena, supported HB 220 on his own behalf and that of the County Attorney's Association. He stated the present restitution situation is a big problem and this bill will help fix it. He explained the definition of victim has been expanded in this bill. He stated this bill will allow the restitution to be garnished from income tax returns.

{Tape: 1; Side: A; Approx. Time Counter: 323 - 385}

Mathew Dale, Director Victim Services, DOJ, supported HB 220. He stated his office has a full-time employee to collect restitution, and this bill will greatly assist that person. He explained many of the expenses of victims go beyond sentencing, and this bill will help pay those expenses.

Kit Hunter, Kalispell, supported HB 220. He stated he is the victim of the Pritchett case. He explained that the defendant, Mr. Pritchett, broke into Mr. Hunter's garage and accidentally blew it up during an attempted theft. **Mr. Hunter** stated the court ordered \$63,000 restitution in 1998 but he has only received \$1200. He stated his frustration in the state's inability to collect restitution on his behalf.

{Tape: 1; Side: A; Approx. Time Counter: 386 - 512}

{Tape: 1; Side: B; Approx. Time Counter: 1 - 3}

Beth Satre, Montana Coalition Against Domestic and Sexual Violence, supported HB 220.

{Tape: 1; Side: B; Approx. Time Counter: 3 - 16}

Ellen Moss, Crime Victims Advisory Counsel, Shelby, supported HB 220. She stated she is also a victim, as her daughter was killed in an accident and another daughter was left in critical condition. She stated the restitution laws are ineffective and this needs to be fixed.

{Tape: 1; Side: B; Approx. Time Counter: 17 - 54}

Anita Richards, supported HB 220. She stated she is a victim of a woman incarcerated in the Montana State Prison (MSP). She stated the court ordered the defendant to pay \$68,000. She closed by saying section three should be amended to state the court must receive evidence of the victim's loss at the time of sentencing.

{Tape: 1; Side: B; Approx. Time Counter: 55 - 80}

Michael Touchette, Chief Probation Officer, DOC, supported HB 220. He stated this is a good bill for victims and makes good business sense. He stressed that section two of the bill requires the defendant to pay until it is paid or he dies. He felt that not forcing victims to have to go through the Clerk of Court to collect restitution will be a great improvement.

Opponents' Testimony: None

Informational Testimony: None

Russ Hyatt, Bureau Chief, Department of Revenue (DOR), supported HB 220. **Mr. Hyatt** explained the three amendments and stated he has gone over them with the DOC. He stated the amendments will help clarify the DOR collections and services procedures.

Questions from Committee Members and Responses:

REP. NEWMAN asked Vickie Murphy, financial specialist, DOC, about the Butte pilot project in which DOC collects restitution on behalf of Butte-Silverbow County as opposed to the courts. **Ms. Murphy** responded the biggest advantage from the victim's perspective is a continual stream of money flowing to the victims. **REP. HARRIS** asked **REP. LASZLOFFY** about extending the lien of restitution to extend beyond the life of the defendant and a mechanism to garnish gambling winnings. **REP. LASZLOFFY** responded that those would both be good amendments. **REP. HARRIS** asked **Mr. Hyatt**, DOR, the same question regarding gambling revenues for restitution. **Mr. Hyatt** responded that DOR has an offset program and money they get is from income tax refunds, but they could also target gambling proceeds. **REP. LANGE** asked **Mr. Gallagher** about amending the defendant's ability to incur new debt. **Mr. Gallagher** responded that he believes a condition of probation could state no new debts shall be incurred.

{Tape: 1; Side: B; Approx. Time Counter: 80 - 320}

REP. RICE asked **Ms. Koch** about the offender declaring bankruptcy or vanishing once off probation or parole. **Ms. Koch** stated that

case law prohibits the discharge of restitution through bankruptcy. She stated that an offender could easily disappear once off probation or parole and doesn't know of any way to prevent that from happening.

{Tape: 1; Side: B; Approx. Time Counter: 320 - 338}

REP. FACEY asked **REP. LASZLOFFY** about the retroactivity of the bill. **REP. LASZLOFFY** responded there is a retroactive clause.

REPS. CLARK, GUTSCHE, and CHAIRMAN SHOCKLEY asked **Ms. Koch** about **DOC's** ability to act as a collection agency beyond probation or parole and the requirement that the offender comply into the future. **Ms. Koch** responded that while on supervision, **DOC** has a lot of leverage in getting the offender to cooperate with restitution obligations. She stated that after supervision, the **DOC** could contract with collection agencies. She stated that **DOC** can garnish wages much like they do with child support. **CHAIRMAN SHOCKLEY** asked whether the bill provides for a the victim getting a lump sum should the offender come into some money. **Ms. Koch** responded that would be a good amendment to the bill.

{Tape: 1; Side: B; Approx. Time Counter: 348 - 514}

REP. NOENNIG asked about collection of debts of people who refuse to pay and whether the state can "get blood out of a turnip." **REP. LASZLOFFY** responded that this bill will help due to the increased latitude in collecting restitution. He stated this bill will allow the **DOC** to work with the **DOR** and collection agencies. **REP. NOENNIG** asked **Mr. Gallagher** about the definition of "victim," whether there is causation language, and where the line is drawn as to restitution. **Mr. Gallagher** responded that a victim would be the victim of the offense and one who the offender voluntarily agrees to repay pursuant to a plea agreement.

{Tape: 2; Side: A; Approx. Time Counter: 1 - 70}

REP. THOMAS asked about the fourth amendment: the **DOR** assessing a user fee, how much the fee would be, and who would pay it. **Mr. Hyatt** responded that the **DOR** may assess a fee of 10% for every dollar they collect on behalf of all state agencies.

{Tape: 2; Side: A; Approx. Time Counter: 75 - 130}

Closing by Sponsor:

REP. LASZLOFFY closed on HB 220 stating that this bill is not about money but about holding defendants accountable. He emphasized that some victims have suffered extreme personal losses for which there is no compensation. He stated that this bill also looks to recoup costs for victims of property crimes. In response to **REP. CLARK'S** assertion that the Department of Corrections is becoming the Department of Collections, he said that the pilot project in Butte has been going well and that he would provide data by the time of executive session.

{Tape: 2; Side: A; Approx. Time Counter: 131 - 254}

HEARING ON HB 166

Sponsor: **REP. DAVID WANZENRIED, HD 68, Missoula**

Opening Statement by Sponsor:

REP. WANZENRIED stated this bill attempts to codify a Supreme Court case rendered in 2001. He explained the proposed change to clarify a plea of guilty or nolo contendere must be accepted under certain circumstances.

Proponents' Testimony:

John Connor, Assistant Attorney General (AG), Department of Corrections (DOC), supported HB 166. **Mr. Connor** stated the bill addresses the Supreme Court case, State v. Peplo. He explained that case involved an issue of a defendant's right to plead guilty during a trial when there were several misdemeanor offenses that may have had some impact on the other offense for which the defendant was being tried. He stated the defendant was charged with several offenses and wanted to plead guilty to the lesser charges so that they wouldn't impact upon the jury's perspective about guilt on the greater charge. The Court acknowledged a general principle of statutory construction stating the word, "may" means "must" when a third person is affected. Peplo noted that there is not a constitutional right to plead guilty during trial; hence, this bill to make it statutorily possible if the prosecution consents. He stated the DOJ does not object to that and supports HB 166.

{Tape: 2; Side: A; Approx. Time Counter: 254 - 346}

George Corn, Ravalli County Attorney, supported HB 166. He stated this bill would amend the current language to reflect what the Court held in Peplo. He stated the defendant in Peplo was

HOUSE OF REPRESENTATIVES
Roll Call
JUDICIARY COMMITTEE

DATE 1/20/03

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT</u>	<u>EXCUSED</u>
REP. JEFF LASZLOFFY, VICE CHAIR MAJORITY	✓		
REP. PAUL CLARK, VICE CHAIR MINORITY	✓		
REP. SCOTT SALES	✓		
REP. MIKE LANGE	✓		
REP. DIANE RICE	✓		
REP. CHRISTOPHER HARRIS	✓		
REP. TOM FACEY	✓		
REP. STEVE GALLUS	✓		
REP. JOHN PARKER	✓		
REP. HOLLY RASER	✓		
REP. MARK NOENNIG	✓		
REP. BRUCE MALCOLM			
REP. BILL THOMAS	✓		
REP. RON STOKER	✓		
REP. GAIL GUTSCHE	✓		
REP. GEORGE EVERETT	✓		
REP. BRAD NEWMAN	✓		
REP. JIM SHOCKLEY, CHAIRMAN	✓		

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MAJOR POINTS IN HOUSE BILL 220 RESTITUTION

This bill primarily overturns Supreme Court opinions based on statutes.

1. Section 1:

- a. Corrects a drafting error made in the 1999 Session. The Court pointed out this drafting error in *State v. Horton*, 2001 MT 100, ¶ 28, n.3, 305 Mont 242, 249. It said,

When the 1999 Legislature amended 46-18-201, MCA, it renumbered portions of the statute. While a deferred imposition of sentence is still discussed in subsection 1, suspended execution of sentence is now discussed in subsection (2). However, the Legislature did not amend the subsection on restitution. That subsection still states: " In addition to any penalties imposed pursuant to *subsection (1)*" (1999) (emphasis added). Hence, under this statute, a district court can only require **restitution** in cases involving deferred imposition of sentence and not in cases involving suspended execution of sentence.

- b. Clarifies common misconception that restitution can only be a condition of probation or parole; so if judge sends offender to prison, offender believes he/she does not have to pay restitution while in prison.

2. Section 2; pg. 4 of bill

- a. Clarifies that the obligation to pay full restitution remains with the offender until it is paid or until the offender dies;
- b. Has the DOC instead of clerks of court collect felony restitution; DOC engaged in a pilot project in Butte to see if this works and the results are favorable;
- c. DOC will collect until full restitution is paid, even after offender is off supervision or not incarcerated; DOC can contract with a governmental agency or private entity to collect restitution. This gives victims someone to help them collect restitution after supervision ends.
- d. This currently says an offender will remain "under state supervision" until restitution is paid. That was a mistake and **needs to be amended out**.

3. Section 3. pg. 4-5

- a. Allows prosecutors and Defendants to plea bargain for payment of restitution (Prosecutor will dismiss a charge if Defendant agrees in a plea

bargain to pay the restitution from that dismissed charge.) Prosecutors had been doing this, but the Supreme Court announced in *State v. Horton* that a strict reading of the statute prohibits the practice. [In *State v. Horton* the prosecutor of Park County charged Horton with felony DUI and felony failure to pay child support – he owed \$47,000 in back support. The prosecutor agreed in a plea bargain to dismiss the felony nonsupport charge if Horton would agree to pay the \$47,000 of back child support he owed. Horton agreed, but then appealed the order that he pay the child support. The Court said the statute only allowed the judge to order restitution to a victim “of the offense” – in other words, the offense to which he pled guilty, the DUI. The Court struck Horton’s obligation to pay the \$47,000 as restitution.] This bill re-words the statute in this section and Section 4 to allow it.

- b. Deletes requirement that P&P officer must submit *documentation* of offender’s future ability to pay restitution. This requirement is now in statute although it is impossible to provide *documentation* that will make a prediction about the offender’s means to pay restitution in the future. The Court says “district courts are not authorized to order restitution until all statutory requirements are satisfied.” *State v. Hilgers*, 1999 MT 284, 297 Mont. 23, 989 P.2d 866. This is so, even if the Defendant, like Hilgers, entered into a plea bargain to pay a specific amount of restitution, the Court said. The Court did not say, but also true is that the district court must have documentation even if there is no reason for it other than the statute requires it. Several times in the restitution statutes, it says the Court **must** order full restitution, so why does the court need this documentation???

4. Section 4; pg 5.

- a. Change on line 22 allows victims to be fully reimbursed for their loss. Supreme Court said victims could not receive what it would cost them to rebuild a garage the offender destroyed. *State v. Pritchett*, 2000 MT 261, 11 P.3d 539. This statutorily changes this ruling and is fair to victims.
- b. Allows a victim to be reimbursed for future medical/counseling expenses due to injury by offender. Courts have ordered this in the past despite the fact they have no statutory authority to do it. This allows judges to do it legally now.
- c. Pg. 6, Lines 12 & 13 reiterate that plea bargains for restitution are O.K.

5. Section 5; pg. 6

- a. Deletes the requirement that the judge set a monthly amount of restitution at time of sentencing. Judge was supposed to have a crystal ball to discern

what amount the offender could pay per month for the rest of the sentence. This changes that and simply states that the P&P officer who is supervising the offender takes the total amount of restitution owed and divides it by the number of months remaining on the offender's sentence.

- b. There is a fail-safe mechanism in 46-18-203 that says a judge cannot revoke an offender merely because the offender could not pay restitution.
- c. Allows P&P officers to set amount of monthly restitution payments and move amount up or down by 10%.
- d. Allows DOC to take money for restitution from inmates while they are incarcerated.
- e. Allows the DOR to intercept offenders' income tax refunds to pay restitution.

6. Section 7; pg. 8

- a. Just makes some changes to the mechanics of withholding for inmates who work in prison industries.

Montana House of Representatives Visitors Register

JUDICIARY COMMITTEE

Date 1/20/03

Bill No. HB 220 Sponsor(s) Laszlo

PLEASE PRINT

PLEASE PRINT

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Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on January 22, 2003 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. George Everett (R)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Michael Lange (R)
Rep. Bruce Malcolm (R)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. John Parker (D)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Scott Sales (R)
Rep. Ron Stoker (R)
Rep. Bill Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Lisa Swanson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 243, 1/14/2003; HB 246,
1/14/2003; HB 255, 1/14/2003;
HB 240, 1/14/2003
Executive Action: HB 234; HB 134

REP. STOKER observed that it's a simple bill to remove detainees from local jails. CHAIRMAN SHOCKLEY responded that is true; that it would give the sheriff control over his jail.

{Tape: 2; Side: B; Approx. Time Counter: 143 - 281}

John MacMaster spoke about the difference between the sentence and the judgment. He explained that the sentence is a part of the judgment. He stated the idea of a form which a judge would use is a good idea but that the judiciary cannot be dictated to.

{Tape: 2; Side: B; Approx. Time Counter: 282 - 336}

Closing by Sponsor:

CHAIRMAN SHOCKLEY closed on HB 240 stating that the idea is to give sheriffs control of the jail. The sheriff cannot influence the sentence. The purpose is simply to make the sheriff's job easier. He said that Mr. Lambert's form is complex and could possibly be changed if needed.

{Tape: 2; Side: B; Approx. Time Counter: 337 - 356}

CHAIRMAN SHOCKLEY said that it was agreed they will not take executive action on this bill until next week.

EXECUTIVE ACTION ON HB 220

The amendments were explained by Mr. MacMaster, but it was determined that there was a miscommunication; that they were still not complete. No executive action was taken on this bill on this day; it was moved to another day.

{Tape: 2; Side: B; Approx. Time Counter: 357 - 432}

EXECUTIVE ACTION ON HB 234

Motion: REP. GALLUS moved that HB 234 DO PASS.

Motion: REP. GALLUS moved that HB 234 BE AMENDED.

Discussion:

REP. CLARK explained the amendment language with regard to wearing seat belts. Anyone in the vehicle not wearing seatbelts could be charged if the vehicle was pulled over. The amendment clarifies that the driver can only be cited if the person not buckled is under the age of 18.

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on January 28, 2003 at
8 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. George Everett (R)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Michael Lange (R)
Rep. Bruce Malcolm (R)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. John Parker (D)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Scott Sales (R)
Rep. Ron Stoker (R)
Rep. Bill Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Lisa Swanson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion
are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 362, 1/22/2003; HB 350,
1/22/2003; HB 358, 1/22/2003; HB
294, 1/22/2003

Executive Action: HB 362; HB 220; HB 14; HB 195; HB
240

HEARING ON HB 362

Sponsor: REP. JACK ROSS, HD 24, Absarokee

Opening Statement by Sponsor:

REP. ROSS opened on HB 362 stating that this bill would make not wearing a seatbelt a minor offense. He explained that if a passenger refused to buckle up, they would get the ticket, not the driver.

{Tape: 1; Side: A; Approx. Time Counter: 1 - 45}

Proponents' Testimony:

Sammy Butler, RN Association, supported HB 362, stating that she sees the results of not wearing a seatbelt. She explained that wearing a seatbelt translates to savings in healthcare costs.

{Tape: 1; Side: A; Approx. Time Counter: 46 - 63}

Beda Lovitt, Montana Medical Association, supported HB 362, stating that this bill is a good idea.

{Tape: 1; Side: A; Approx. Time Counter: 61 - 76}

Steve Yeakel, Montana Counsel on Maternal and Child Health, supported HB 362 stating that the seatbelt issue is not a new concept. He spoke of the harmful effects on children who are involved in accidents and not wearing seatbelts.

Shawn Driscoll, Chief of Montana Highway Patrol, supported HB 362.

{Tape: 1; Side: A; Approx. Time Counter: 77 - 115}

Mona Jamison, General Motors, supported HB 362. She gave statistics on fatalities showing that when a person is buckled up, lives are saved. She emphasized that when a driver is restrained, they are better able to maintain control and lives are saved.

{Tape: 1; Side: A; Approx. Time Counter: 116 - 155}

of nonconsensual sexual activity, sexual contact with a minor or any form of sexual conduct for commercial purposes. He stated that the Court held that Montanans have a constitutional right of privacy, a right of personal autonomy, the right to be let alone, the right to engage in noncommercial, private, sexual relations free of governmental interference, intrusion and condemnation. He stated that nothing in the bill would hinder the prosecution of terrible behaviors such as, including but not limited to, non-consensual sex, commercial sex, and sexual assault. He urged the Committee to support and defend the Constitution by passing HB 294.

{Tape: 3; Side: A; Approx. Time Counter: 26 - 93}

EXECUTIVE ACTION ON HB 362

Motion: REP. HARRIS moved that HB 362 DO PASS.

Discussion:

John MacMaster stated this Committee, on January 22, passed HB 234 which amended the seatbelt law. He stated this bill would do the same thing but allow an officer to stop anyone no matter what their age for not wearing a seatbelt. He stated that the bills would be in conflict, and one bill should take precedence over the other.

Vote: Motion that HB 362 DO PASS failed 6-12 by roll call vote with REPS. HARRIS, FACEY, PARKER, NOENNIG, THOMAS, AND GUTSCHE voting aye .

Motion/Vote: REP. GALLUS moved that HB 362 BE TABLED. Motion carried 14-4 with GUTSCHE, HARRIS, NOENNIG, and THOMAS voting no.

{Tape: 3; Side: A; Approx. Time Counter: 94 - 431}

EXECUTIVE ACTION ON HB 220

Motion: REP. LASZLOFFY moved that HB 220 DO PASS.

Motion: REP. HARRIS moved that HB 220 BE AMENDED (MacMaster/Newman Amendment).

Discussion:

The Committee discussed restitution to victims and the accrual of interest while in prison. They also discussed having interest not accrue until the inmate is paroled. The Committee discussed garnishing a prisoner's wages, amounts to be garnished, and rates

of interest. **REP. SALES** stated that this bill makes it so punitive, that an inmate would lose all incentive to try to pay. He emphasized that when the law is so punitive, the inmate, once paroled, will either skip out completely, or willingly return to jail.

Vote: Motion that **HB 220 BE AMENDED** carried 17-1 by voice vote with **REP. CLARK** voting no.

Motion: **REP. LASZLOFFY** moved that **HB 220 BE FURTHER AMENDED**. (Line 4, page 4 requiring the duty to pay until paid in full, Noennig's and Newman's Amendments)

Discussion:

The Committee discussed the inmate's duty to pay and that it should be collectible until it is paid in full. The Committee discussed drafting language which would make it as inclusive as possible and spoke of the ability to go after the person's estate even after death. The Committee discussed when interest should be incurred.

Vote: Motion that **HB 220 BE FURTHER AMENDED** carried 17-1 with **GUTSCHE** voting no by voice vote.

{Tape: 3; Side: A; Approx. Time Counter: 478 - 503}

{Tape: 4; Side: A; Approx. Time Counter: 1 - 18}

Motion/Vote: **REP. LANGE** moved that **HB 220 BE AMENDED**. (Lange Amendment to limit offender's ability to incur new debt when they get out of prison, and to maintain a residence and a job.) **Motion failed 6-12 by roll call vote with REPS. GALLUS, HARRIS, LANGE, NOENNIG, NEWMAN and RASER voting aye.**

{Tape: 4; Side: A; Approx. Time Counter: 43 - 109}

Motion/Vote: **REP. SALES** moved that **HB 220 BE AMENDED**. (Sales Amendment would strike, on the third amendment, page 4, line 3 dealing with interest altogether) **Motion carried 16-2 with REPS. GUTSCHE and CLARK voting no by voice vote.**

{Tape: 4; Side: A; Approx. Time Counter: 110 - 141}

Motion/Vote: **REP. STOKER** moved that **HB 220 DO PASS AS AMENDED**. **Motion carried 16-2 by voice vote with CLARK and GUTSCHE voting no.**

HOUSE OF REPRESENTATIVES
Roll Call
JUDICIARY COMMITTEE

DATE 11/28/03

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT</u>	<u>EXCUSED</u>
REP. JEFF LASZLOFFY, VICE CHAIR MAJORITY	✓		
REP. PAUL CLARK, VICE CHAIR MINORITY	✓		
REP. SCOTT SALES	✓		
REP. MIKE LANGE	✓		
REP. DIANE RICE	✓		
REP. CHRISTOPHER HARRIS	✓		
REP. TOM FACEY	✓		
REP. STEVE GALLUS	✓		
REP. JOHN PARKER			
REP. HOLLY RASER	✓		
REP. MARK NOENNIG	✓		
REP. BRUCE MALCOLM	✓		
REP. BILL THOMAS	✓		
REP. RON STOKER	✓		
REP. GAIL GUTSCHE	✓		
REP. GEORGE EVERETT	✓		
REP. BRAD NEWMAN	✓		
REP. JIM SHOCKLEY, CHAIRMAN			

HOUSE OF REPRESENTATIVES
Roll Call Vote
JUDICIARY COMMITTEE

DATE 1/28/03 BILL NO 220 MOTION NO. _____
 MOTION: Lange motion to amend fails 6-12

NAME	AYE	NO	ABSENTEE
REP. JEFF LASZLOFFY, VICE CHAIR MAJORITY		✓	
REP. PAUL CLARK, VICE CHAIR MINORITY		✓	
REP. SCOTT SALES		✓	
REP. MIKE LANGE	✓		
REP. DIANE RICE		✓	
REP. CHRISTOPHER HARRIS	✓		
REP. TOM FACEY		✓	
REP. STEVE GALLUS	✓		
REP. JOHN PARKER		✓	
REP. HOLLY RASER	✓		
REP. MARK NOENNIG	✓		
REP. BRUCE MALCOLM		✓	
REP. BILL THOMAS		✓	
REP. RON STOKER		✓	
REP. GAIL GUTSCHE		✓	
REP. GEORGE EVERETT		✓	
REP. BRAD NEWMAN	✓		
REP. JIM SHOCKLEY, CHAIRMAN		✓	

6 12

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HOUSE STANDING COMMITTEE REPORT

January 28, 2003

Page 1 of 2

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 220** (first reading copy -- white) do pass as amended.

Signed:

Representative Jim Shockley, Chair

And, that such amendments read:

1. Title, page 1, line 11.

Following: "46-18-201,"

Insert: "46-18-237,"

2. Page 3, line 29.

Insert: "Section 2. Section 46-18-237, MCA, is amended to read:

"46-18-237. Garnishment -- report by supervising authority.

(1) If the department of corrections becomes aware that a prisoner person while incarcerated under the legal custody of the department of corrections or a person supervised by the department is entitled to receive money from any source, the prisoner's person's supervising authority may prepare a report identifying:

(a) the total costs incurred by the state or county during the prisoner's person's incarceration;

(b) the criminal sentences imposed upon the prisoner person, including:

(i) the amount of restitution, if any, ordered in each sentence;

(ii) the name and current address of each victim or other person to whom restitution is owed;

(iii) the amount of restitution paid by the prisoner person; and

(iv) the amount of restitution currently owed by the prisoner person for each sentence;

(c) the amount of any child support owed by the prisoner person.

(2) The supervising authority shall provide notice and a

Committee Vote:

Yes 16, No 2.

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copy of the report to the board of crime control and the county attorney for the county in which the prisoner person was sentenced, either of whom may submit the report along with a petition for garnishment to the court that sentenced the prisoner person. The court may order garnishment of the prisoner's person's money for the payment of restitution, child support, and per diem costs of incarceration owed by the prisoner person. Upon receipt of the petition, the court shall provide a copy of the report to the prisoner person, who has 15 days following receipt to file an objection. The court may hold a hearing to consider objections raised by the prisoner person.

(3) Upon compliance with the provisions of subsections (1) and (2), the court shall determine the amount of restitution, child support, and repayment for per diem costs owed by the prisoner person. The court shall order, up to the amount of money available, payment of an amount equal to the restitution owed by the prisoner person to the person designated under 46-18-245 to supervise the making of restitution payments, any outstanding child support payments to the department of public health and human services for disbursement to the obligee, and per diem costs owed by the prisoner person. All restitution owed by the prisoner person must be paid prior to payment of any child support payments. All child support owed by the prisoner person must be paid prior to the payment of any per diem costs."

Renumber: subsequent sections

3. Page 4, line 4.

Following: "offender"

Insert: "or the offender's estate"

4. Page 4, line 4 through line 5.

Strike: "or the" on line 4 through "first," on line 5

5. Page 5, line 9.

Strike: "may receive"

Insert: "shall accept"

- END -

Total 0

Excused: None.

Total 0

Absent or not voting: None.

Total 0

HB 218 (Eighty-seventh Legislative Day - Third Reading - House) , as amended by the Governor, passed as follows:

Ayes: Andersen, Ballantyne, Barrett, Becker, Bergren, Bitney, Bixby, Bookout-Reinicke, Branae, D. Brown, R. Brown, Brueggeman, Buzzas, Callahan, Carney, E. Clark, P. Clark, Cohenour, Cyr, Devlin, Dickenson, Dowell, Erickson, Everett, Facey, Fisher, Forrester, Franklin, Fritz, Gallik, Gallus, Galvin-Halcro, Gibson, Gillan, Golie, Gutsche, Haines, Harris, Hawk, Hedges, Hurwitz, Jackson, Jacobson, Jayne, Jent, Juneau, Kasten, Kaufmann, Keane, Lake, Lambert, Lange, Laslovich, Laszloffy, Lawson, Lehman, Lenhart, Lewis, Lindeen, Maedje, Malcolm, Matthews, McKenney, Mendenhall, Morgan, Musgrove, Newman, Noennig, A. Olson, B. Olson, Parker, Pattison, Peterson, Raser, Rice, Ripley, Roberts, Rome, Ross, Ryan, Sales, Schrupf, Shockley, Sinrud, Small-Eastman, Smith, Steinbeisser, Stoker, Thomas, Wagman, Waitschies, Wanzenried, Weiss, Wilson, Windy Boy, Witt, Younkin, Mr. Speaker.

Total 98

Noes: Balyeat, Fuchs.

Total 2

Excused: None.

Total 0

Absent or not voting: None.

Total 0

HB 218 (Eighty-eighth Legislative Day - Second Reading - Senate) - Governor's Amendments - Senator Gebhardt moved Governor's amendments to HB 218 be concurred in. Motion carried unanimously.

HB 218 (Eighty-ninth Legislative Day - Third Reading - Senate) , as amended by the Governor, concurred in as follows:

Yeas: Anderson, Bales, Barkus, Black, Bohlinger, Butcher, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, DePratu, Ellingson, Elliott, Esp, Gebhardt, Glaser, Grimes, Hansen, Harrington, Johnson, Kitzenberg, Laible, Mahlum, Mangan, McCarthy, McGee, McNutt, Nelson, O'Neil, Pease, Perry, Roush, Ryan, Schmidt, Shea, Squires, Stapleton, Stonington, Story, Tash, Taylor, Tester, Thomas, Toole, Tropila, Wheat, Zook, Mr. President.

Total 49

Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: Sprague.

Total 1

HB 220 (Twenty-second Legislative Day - Second Reading - House) - Representative Laszloffy moved HB 220 do pass.

Representative Laszloffy moved HB 220, second reading copy, be amended as follows :

1. Title, page 1, line 8.

Following: "ENTITY"

Insert: "OR GOVERNMENTAL AGENCY"

2. Page 8, line 25.

Strike: "court"

Insert: "department of corrections"

3. Page 8, line 26.

Following: "shall"

Insert: ", pursuant to an agreement made under 46-18-241,"

4. Page 8, line 28.

Following: "victim."

Insert: "The department of revenue may charge the department of corrections a fee to recover its costs of intercepting a tax refund. The fee may not exceed the amount charged a state agency for debt collection services under Title 17, chapter 4."

Amendment adopted as follows:

Ayes: Andersen, Ballantyne, Barrett, Becker, Bergren, Bixby, Bookout-Reinicke, Branae, D. Brown, R. Brown, Brueggeman, Callahan, Carney, E. Clark, P. Clark, Cohenour, Cyr, Devlin, Dickenson, Dowell, Erickson, Facey, Fisher, Forrester, Franklin, Fritz, Fuchs, Gallik, Gallus, Galvin-Halcro, Gibson, Gillan, Golie, Gutsche, Haines, Harris, Hawk, Hedges, Hurwitz, Jackson, Jacobson, Jent, Juneau, Kasten, Kaufmann, Keane, Lake, Lambert, Lange, Laslovich, Laszloffy, Lawson, Lehman, Lenhart, Lewis, Maedje, Malcolm, Matthews, McKenney, Mendenhall, Morgan, Musgrove, Newman, Noennig, A. Olson, B. Olson, Parker, Pattison, Peterson, Raser, Rice, Ripley, Roberts, Rome, Ross, Ryan, Sales, Schrupf, Shockley, Sinrud, Smith, Steinbeisser, Stoker, Thomas, Wagman, Waitschies, Wanzenried, Weiss, Wilson, Windy Boy, Witt, Younkin, Mr. Speaker.

Total 93

Noes: Balyeat, Jayne, Small-Eastman.

Total 3

Voted Absentee: Peterson, Aye.

Excused: Bitney, Buzzas, Everett, Lindeen.

Total 4

Absent or not voting: None.

Total 0

Motion that HB 220, as amended, do pass carried as follows:

Ayes: Andersen, Ballantyne, Balyeat, Barrett, Becker, Bergren, Bitney, Bookout-Reinicke, Branae, D. Brown, R. Brown, Brueggeman, Buzzas, Callahan, Carney, E. Clark, P. Clark, Cohenour, Cyr, Devlin, Dickenson, Dowell, Erickson, Everett, Facey, Fisher, Forrester, Franklin, Fritz, Fuchs, Gallik, Gallus, Galvin-Halcro, Gibson, Gillan, Golie, Gutsche, Haines, Harris, Hawk, Hedges, Hurwitz, Jackson, Jacobson, Jent, Kasten, Kaufmann, Keane, Lake, Lambert, Lange, Laslovich, Laszloffy, Lawson, Lehman, Lenhart, Lewis, Lindeen, Maedje, Malcolm, Matthews, McKenney, Mendenhall, Morgan, Musgrove, Newman, Noennig, A. Olson, B. Olson, Parker, Pattison, Peterson, Raser, Rice, Ripley, Roberts, Rome, Ross, Ryan, Sales, Schrupf, Shockley, Sinrud, Smith, Steinbeisser, Stoker, Thomas, Wagman, Waitschies, Wanzenried, Weiss, Wilson, Windy Boy, Witt, Younkin, Mr. Speaker.

Total 96

Noes: Bixby, Jayne, Juneau, Small-Eastman.

Total 4

Voted Absentee: Bitney, Buzzas, Everett, Lindeen, Peterson, Ayes.

Excused: None.

Total 0

Absent or not voting: None.

Total 0

HB 220 (Twenty-fourth Legislative Day - Third Reading - House) passed as follows:

Ayes: Andersen, Ballantyne, Balyeat, Barrett, Becker, Bergren, Bitney, Bookout-Reinicke, Branae, D. Brown, R. Brown, Brueggeman, Callahan, Carney, E. Clark, P. Clark, Cohenour, Cyr, Devlin, Dickenson, Dowell, Erickson, Everett, Facey, Fisher, Forrester, Fritz, Gallik, Gallus, Galvin-Halcro, Gibson, Gillan, Golie, Gutsche, Haines, Harris, Hawk, Hurwitz, Jackson, Jacobson, Jent, Juneau, Kasten, Kaufmann, Lake, Lambert, Lange, Laslovich, Laszloffy, Lawson, Lehman, Lenhart, Lewis, Lindeen, Maedje, Malcolm, Matthews, McKenney, Mendenhall, Morgan, Musgrove, Newman,

Noennig, A. Olson, B. Olson, Parker, Pattison, Peterson, Raser, Rice, Ripley, Roberts, Rome, Ross, Ryan, Sales, Schrupf, Shockley, Sinrud, Small-Eastman, Smith, Steinbeisser, Stoker, Thomas, Wagman, Waitschies, Wanzenried, Weiss, Wilson, Windy Boy, Witt, Younkin, Mr. Speaker.

Total 93

Noes: Bixby, Jayne.

Total 2

Excused: Buzzas, Franklin, Fuchs, Hedges, Keane.

Total 5

Absent or not voting: None.

Total 0

HB 220 (Sixty-first Legislative Day - Second Reading - Senate) - Senator McGee moved HB 220 be concurred in. Motion carried unanimously.

HB 220 (Sixty-second Legislative Day - Third Reading - Senate) , as amended by the Senate, concurred in as follows:

Yeas: Anderson, Bales, Barkus, Black, Bohlinger, Butcher, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, DePratu, Ellingson, Elliott, Esp, Gebhardt, Glaser, Grimes, Hansen, Harrington, Johnson, Kitzenberg, Laible, Mahlum, McCarthy, McGee, McNutt, Nelson, O'Neil, Pease, Perry, Roush, Ryan, Schmidt, Shea, Squires, Stapleton, Stonington, Story, Tash, Taylor, Tester, Thomas, Toole, Tropila, Wheat, Zook, Mr. President.

Total 48

Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: Mangan, Sprague.

Total 2

HB 220 (Seventy-fourth Legislative Day - Second Reading - House) - Senate Amendments - Representative Laszloffy moved Senate amendments to HB 220 be concurred in. Motion carried as follows:

Ayes: Andersen, Ballantyne, Balyeat, Barrett, Becker, Bergren, Bitney, Bookout-Reinicke, Branae, D. Brown, R. Brown, Brueggeman, Buzzas, Callahan, Carney, E. Clark, P. Clark, Cohenour, Cyr, Devlin, Dickenson, Dowell, Erickson, Everett, Facey, Fisher, Forrester, Franklin, Fritz, Fuchs, Gallik, Gallus, Galvin-Halcro, Gibson, Gillan, Golie, Gutsche, Haines, Harris, Hawk, Hedges, Hurwitz, Jackson, Jacobson, Jent, Juneau, Kasten, Kaufmann, Keane, Lake, Lambert, Lange, Laslovich, Laszloffy, Lawson, Lehman, Lenhart, Lewis, Lindeen, Malcolm, Matthews, McKenney, Mendenhall, Morgan, Musgrove, Newman, Noennig, A. Olson, B. Olson, Parker, Pattison, Peterson, Raser, Rice, Ripley, Roberts, Rome, Ross, Ryan, Sales, Schrupf, Shockley, Sinrud, Small-Eastman, Smith, Steinbeisser, Stoker, Thomas, Wagman, Waitschies, Wanzenried, Weiss, Wilson, Windy Boy, Witt, Younkin, Mr. Speaker.

Total 97

Noes: Bixby, Jayne.

Total 2

Voted Absentee: Facey, Windy Boy, Ayes.

Excused: None.

Total 0

Absent or not voting: Maedje.

Total 1

HB 220 (Seventy-fifth Legislative Day - Third Reading - House) , as amended by the Senate, passed as follows:

HOUSE BILL NO. 220

INTRODUCED BY LASZLOFFY

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING THE LAWS PROVIDING FOR RESTITUTION BY CRIMINALS TO ADDRESS COURT OPINIONS; ENSURING THAT THE DUTY TO PAY CONTINUES TO EXIST UNTIL RESTITUTION IS FULLY PAID; ALLOWING THE STATE TO CONTRACT WITH A PRIVATE ENTITY OR GOVERNMENTAL AGENCY FOR THE COLLECTION OF RESTITUTION PAYMENTS; PROVIDING FOR FULL REPLACEMENT VALUE RESTITUTION; ADDING METHODS TO ENSURE PAYMENT OF RESTITUTION; CHANGING PROCEDURES FOR SUPERVISION OF THE PAYMENT OF RESTITUTION; AMENDING SECTIONS 46-18-201, 46-18-237, 46-18-241, 46-18-242, 46-18-243, 46-18-244, 46-18-245, AND 53-30-132, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition of sentence, except as otherwise specifically provided by statute, for a period:

(i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

(ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.

(b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(2) Whenever a person has been found guilty of an offense upon a verdict of

guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.

(3) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may impose a sentence that may include:

(a) a fine as provided by law for the offense;

(b) payment of costs, as provided in 46-18-232, or payment of costs of court-appointed counsel as provided in 46-8-113;

(c) a term of incarceration at a county detention center or state prison, as provided in Title 45, for the offense;

(d) commitment of:

(i) an offender not referred to in subsection (3)(d)(ii) to the department of corrections, with a recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years of the commitment to the department of corrections must be suspended; or

(ii) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in an appropriate correctional facility or program;

(e) with the approval of the facility or program, placement of the offender in a community corrections facility or program as provided in 53-30-321;

(f) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, placement of the offender in a prerelease center or prerelease program for a period not to exceed 1 year;

(g) chemical treatment of sex offenders, as provided in 45-5-512, if applicable, that is paid for by and for a period of time determined by the department of corrections, but not exceeding the period of state supervision of the person; or

(h) any combination of subsections (2) through (3)(g).

(4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the sentencing judge may impose upon the offender any reasonable restrictions or conditions during the period of the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) may include but are not limited to:

- (a) limited release during employment hours as provided in 46-18-701;
- (b) incarceration in a detention center not exceeding 180 days;
- (c) conditions for probation;
- (d) payment of the costs of confinement;
- (e) payment of a fine as provided in 46-18-231;
- (f) payment of costs as provided in 46-18-232 and 46-18-233;
- (g) payment of costs of court-appointed counsel as provided in 46-8-113;
- (h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;
- (i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;
- (j) community service;
- (k) home arrest as provided in Title 46, chapter 18, part 10;
- (l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;
- (m) with the approval of the department of corrections and with a signed statement from an offender that the offender's participation in the boot camp incarceration program is voluntary, an order that the offender complete the boot camp incarceration program established pursuant to 53-30-403;
- (n) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society; or
- (o) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(n).

(5) In addition to any other penalties imposed ~~pursuant to subsection (1)~~, if

a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that the a victim of the offense, as defined in 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the sentence is deferred or suspended.

(6) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(7) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise."

SECTION 2. SECTION 46-18-237, MCA, IS AMENDED TO READ:

"46-18-237. Garnishment -- report by supervising authority. (1) If the department of corrections becomes aware that a ~~prisoner~~ person while incarcerated under the legal custody of the department of corrections or a person supervised by the department is entitled to receive money from any source, the ~~prisoner's~~ person's supervising authority may prepare a report identifying:

(a) the total costs incurred by the state or county during the ~~prisoner's~~ person's incarceration;

(b) the criminal sentences imposed upon the ~~prisoner~~ person, including:

(i) the amount of restitution, if any, ordered in each sentence;

(ii) the name and current address of each victim or other person to whom restitution is owed;

(iii) the amount of restitution paid by the ~~prisoner~~ person; and

(iv) the amount of restitution currently owed by the ~~prisoner~~ person for each sentence;

(c) the amount of any child support owed by the ~~prisoner~~ person.

(2) The supervising authority shall provide notice and a copy of the report to the board of crime control and the county attorney for the county in which the ~~prisoner~~ person was sentenced, either of whom may submit the report along with a petition for

garnishment to the court that sentenced the ~~prisoner~~ person. The court may order garnishment of the ~~prisoner's~~ person's money for the payment of restitution, child support, and per diem costs of incarceration owed by the ~~prisoner~~ person. Upon receipt of the petition, the court shall provide a copy of the report to the ~~prisoner~~ person, who has 15 days following receipt to file an objection. The court may hold a hearing to consider objections raised by the ~~prisoner~~ person.

(3) Upon compliance with the provisions of subsections (1) and (2), the court shall determine the amount of restitution, child support, and repayment for per diem costs owed by the ~~prisoner~~ person. The court shall order, up to the amount of money available, payment of an amount equal to the restitution owed by the ~~prisoner~~ person to the person designated under 46-18-245 to supervise the making of restitution payments, any outstanding child support payments to the department of public health and human services for disbursement to the obligee, and per diem costs owed by the ~~prisoner~~ person. All restitution owed by the ~~prisoner~~ person must be paid prior to payment of any child support payments. All child support owed by the ~~prisoner~~ person must be paid prior to the payment of any per diem costs."

Section 3. Section 46-18-241, MCA, is amended to read:

"46-18-241. Condition of restitution. (1) As provided in 46-18-201, a sentencing court shall, as part of the sentence, require an offender to make full restitution to any victim ~~of the offense~~ who has sustained pecuniary loss ~~as a result of the offense,~~ including a person suffering an economic loss ~~as a result of the crime.~~ The duty to pay full restitution under the sentence remains with the offender OR THE OFFENDER'S ESTATE until full restitution is paid ~~or the offender dies, whichever occurs first,~~ and is a condition of any probation or parole. The offender remains under state supervision for the purposes of payment and collection of restitution until full restitution is paid, regardless of whether any period of incarceration, probation, or parole imposed upon the offender has expired.

(2) (a) The court shall require the offender to pay the cost of supervising the payment of restitution, as provided in 46-18-245, if the offender is able to pay, by paying an amount equal to 10% of the amount of restitution ordered, but not less

than \$5.

(b) A felony offender shall pay the restitution and cost of supervising the payment of restitution to the department of corrections until the offender has fully paid the restitution and the cost of supervising the payment of restitution. The department shall pay the restitution to the person or entity to whom the court ordered restitution to be paid. The department may contract with a government agency or private entity for the collection of the payments for restitution and the cost of collecting the payments for restitution during the period following state supervision or state custody of the offender. The department shall adopt rules to implement this subsection (2) (b).

(c) ~~Payment~~ In a misdemeanor case, payment of restitution and of the cost of supervising the payment of restitution must be made to the court, ~~which~~ until the offender has fully paid the restitution and the cost of supervising the payment of restitution. The court shall disburse the money to the entity employing the person ordered to supervise restitution under 46-18-245, which shall disburse the restitution to the person or entity to whom the court ordered restitution to be paid.

(3) If at any time the court finds that, because of circumstances beyond the offender's control, the offender is not able to pay any restitution, the court may order the offender to perform community service during the time that the offender is unable to pay. The offender must be given a credit against restitution due at the rate of the hours of community service times the state minimum wage in effect at the time that the community service is performed."

Section 4. Section 46-18-242, MCA, is amended to read:

"46-18-242. Investigation and report of victim's loss. (1) Whenever the court believes that a victim ~~of the offense~~ may have sustained a pecuniary loss ~~as a result of the offense~~ or whenever the prosecuting attorney requests, the court shall order the probation officer, restitution officer, or other designated person to include in the presentence investigation and report:

(a) ~~documentation~~ a list of the offender's ~~financial resources and future ability to pay restitution assets~~; and

(b) ~~documentation of an affidavit that specifically describes the victim's pecuniary loss and the replacement value in dollars of the loss, submitted by the victim or by the board of crime control if compensation for the victim's loss has been reimbursed by the state.~~

(2) When a presentence report is not authorized or requested, the court ~~may~~ receive SHALL ACCEPT evidence of the ~~offender's ability to pay~~ and the victim's loss at the time of sentencing."

Section 5. Section 46-18-243, MCA, is amended to read:

"46-18-243. Definitions. For purposes of 46-18-241 through 46-18-249, the following definitions apply:

(1) "Pecuniary loss" means:

(a) all special damages, but not general damages, substantiated by evidence in the record, that a person could recover against the offender in a civil action arising out of the facts or events constituting the offender's criminal activities, including without limitation ~~the money equivalent of loss resulting from property taken, destroyed, broken, or otherwise harmed~~ and out-of-pocket losses, such as medical expenses, loss of income, expenses reasonably incurred in obtaining ordinary and necessary services that the victim would have performed if not injured, expenses reasonably incurred in attending court proceedings related to the commission of the offense, and reasonable expenses related to funeral and burial or crematory services; and

(b) the full replacement cost of property taken, destroyed, harmed, or otherwise devalued as a result of the offender's criminal conduct;

(c) future medical expenses that the victim can reasonably be expected to incur as a result of the offender's criminal conduct, including the cost of psychological counseling, therapy, and treatment; and

~~—(b)-(d)~~ (d) reasonable out-of-pocket expenses incurred by the victim in filing charges or in cooperating in the investigation and prosecution of the offense.

(2) (a) "Victim" means:

(i) a person who suffers loss of property, bodily injury, or death as a result

of:

- (A) the commission of an offense;
 - (B) the good faith effort to prevent the commission of an offense; or
 - (C) the good faith effort to apprehend a person reasonably suspected of committing an offense;
 - (ii) the estate of a deceased or incapacitated victim or a member of the immediate family of a homicide victim;
 - (iii) a governmental entity that suffers loss of property as a result of the commission of an offense in this state or that incurs costs or losses during the commission or investigation of an escape, as defined in 45-7-306, or during the apprehension or attempted apprehension of the escapee; or
 - (iv) an insurer or surety with a right of subrogation to the extent it has reimbursed the victim of the offense for pecuniary loss;
 - (v) the crime victims compensation and assistance program established under Title 53, chapter 9, part 1, to the extent that it has reimbursed a victim for pecuniary loss; and
 - (vi) any person or entity whom the offender has voluntarily agreed to reimburse as part of a voluntary plea bargain.
- (b) Victim does not include a person who is accountable for the crime or accountable for a crime arising from the same transaction."

Section 6. Section 46-18-244, MCA, is amended to read:

"46-18-244. Type and time of payment -- defenses -- ensuring payment. (1) The court shall specify the total amount ~~to be paid and the method and time of payment and may permit payment in installments~~ of restitution that the offender shall pay.

(2) ~~In determining the amount, method, and time of each installment payment, the court shall consider the financial resources and future ability of the offender to pay. The court shall provide for payment to a victim of the full amount of the pecuniary loss caused by the offense. The~~ In the proceeding for the determination of the amount of restitution, the offender may assert any defense that the offender could raise in a civil action for the loss sought to be compensated by the restitution order for which

the victim seeks compensation.

(3) In addition to other methods of payment, the court may order one or more of the following in order to satisfy the offender's restitution obligation:

(a) forfeiture and sale of the offender's assets under the provisions of Title 25, chapter 13, part 7, unless the court finds, after notice and an opportunity for the offender to be heard, that the assets are reasonably necessary for the offender to sustain a living or support the offender's dependents or unless the state determines that the cost of forfeiture and sale would outweigh the amount available to the victim after sale. If the proceeds of sale exceed the amount of restitution ordered and the costs of forfeiture and sale, any remaining amount must be returned to the offender.

(b) return of any property to the victim;

~~(c) payment of up to one-third of the offender's prison earnings.~~

(4) With the consent of the victim and in the discretion of the court, an offender may be ordered to make restitution in services to the victim in lieu of money or to make restitution to a person designated by the victim, if that person provided services to the victim as a result of the offense.

(5) After a prosecution is commenced and upon petition of the prosecutor, the court may grant a restraining order or injunction, require a satisfactory bond, or take other action if the court finds that the restraining order or injunction, bond, or other action is necessary to preserve property or assets that could be used to satisfy an anticipated restitution order. A hearing must be held on the petition, and any person with an interest in the property is entitled to be heard.

(6) For a felony offense:

(a) during any period that the offender is incarcerated, the department of corrections shall take a percentage, as set by department rule, of any money in any account of the defendant administered by the department and use the money to satisfy any existing restitution obligation;

(b) at the beginning of any period during which the offender is not incarcerated, the offender shall sign a statement allowing any employer of the offender to garnish up to 25% of the offender's compensation and give the garnished amounts to the department of corrections to be used by the department to satisfy any existing restitution

obligation; and

(c) during any period that the defendant is on probation or parole, the probation and parole officer shall set a monthly restitution payment amount by dividing the total amount of unpaid restitution by the number of remaining months of probation or parole. The probation and parole officer may adjust the monthly payment up or down by a maximum of 10%, depending on the offender's circumstances.

(7) The court DEPARTMENT OF CORRECTIONS shall give the department of revenue a copy of the order to pay restitution. If full restitution has not been paid, the department of revenue shall, PURSUANT TO AN AGREEMENT MADE UNDER 46-18-241, intercept any state tax refunds and any federal tax refunds, as provided by law, due the offender and transfer the money to the department of corrections for a felony offense and to the sentencing court for a misdemeanor offense for disbursement to the victim. THE DEPARTMENT OF REVENUE MAY CHARGE THE DEPARTMENT OF CORRECTIONS A FEE TO RECOVER ITS COSTS OF INTERCEPTING A TAX REFUND. THE FEE MAY NOT EXCEED THE AMOUNT CHARGED A STATE AGENCY FOR DEBT COLLECTION SERVICES UNDER TITLE 17, CHAPTER 4."

Section 7. Section 46-18-245, MCA, is amended to read:

"46-18-245. Supervision of payment. The For a felony offense, the court shall order the department of corrections to supervise the payment of restitution. For a misdemeanor offense, the court may order a ~~probation officer,~~ restitution officer, or other designated person to supervise the making of restitution and to report to the court any default in payment. If the victim of a misdemeanor has received compensation under Title 53, chapter 9, the court may also order an employee of the ~~board of crime control~~ office of victims services, as defined in 53-9-103, to supervise the making of restitution and to report to the court any default in payment."

Section 8. Section 53-30-132, MCA, is amended to read:

"53-30-132. Inmate participation and status in prison work programs -- prison industries and vocational training program -- wages and benefits. (1) The department of corrections may:

(a) establish prison industries that will result in the production or manufacture of products and the rendering of services that may be needed by any

department or agency of the state or any political subdivision of the state, by any agency of the federal government, by any other states or their political subdivisions, or by nonprofit organizations and that will assist in the rehabilitation of inmates in institutions;

(b) obtain federal certification of specific prison industries programs in order to gain access to interstate markets for prison industries products;

(c) contract with private industry for the sale of goods or components manufactured or produced in shops under its jurisdiction and for the employment of inmates in federally certified prison industries programs;

(d) print catalogs describing goods manufactured or produced by prison industries and distribute the catalogs;

(e) fix the sale price for goods produced or manufactured by prison industries. Prices may not exceed prices existing in the open market for goods of comparable quality.

(f) require a correctional facility to purchase needed goods from other correctional facilities;

(g) provide for the repair and maintenance of property and equipment of institutions by inmates;

(h) provide for the removal of graffiti from property and equipment of institutions and the removal of litter from the property of institutions, public roads, and public parks by inmates;

(i) provide for construction projects, up to the aggregate sum of \$200,000 for each project, performed by inmates. The department of administration may:

(i) exempt projects authorized by this subsection from the provisions of Title 18, chapter 2, relating to construction, public bidding, bonding, or contracts; and

(ii) exempt inmates who provide labor for those projects from the labor and wage requirements of Title 18, chapter 2, part 4. Inmates providing labor for projects under this subsection must be paid a rate of pay as provided in subsection (5).

(j) provide for the repair and maintenance by prison industries of furniture and equipment of any state agency;

(k) provide for the manufacture by prison industries of motor vehicle license plates and other related articles;

- (l) sell manufactured or agricultural products and livestock on the open market;
- (m) provide for the manufacture by prison industries of highway, road, and street marking signs for the use of the state or any of its political subdivisions, except when the manufacture of the signs is in violation of a collective bargaining contract;
- (n) pay an inmate from receipts from the sale of products produced or manufactured or services rendered in a program in which the inmate is working;
- (o) collect 15% of the ~~net~~ gross wages paid to an inmate employed in a federally certified prison industries program, to be deposited in a department restitution fund and used to satisfy any unpaid restitution obligation of the inmate or, if the obligation has been fully paid or no restitution was ordered, for transfer quarterly to the crime victims compensation and assistance program in the department of justice for deposit in the state general fund as provided in Title 53, chapter 9, part 1; and
- (p) collect from an inmate employed in a federally certified prison industries program charges for room and board consistent with charges established by the director for inmates assigned to prerelease centers.

(2) Except as provided in subsection (3), furniture made in the prison may be purchased by state agencies in accordance with the procurement provisions under Title 18, chapter 4. All other prison-made furniture may be sold only through licensed wholesale or retail furniture outlets or through export firms for sale to international markets.

(3) Any state institution, facility, or program operated by the department of corrections may purchase prison-made furniture without complying with the procurement provisions under Title 18, chapter 4.

(4) While engaged in on-the-job training and production, inmates not employed in a federally certified prison industries program may be paid a wage in accordance with subsection (5). Inmates employed in a federally certified prison industries program must be paid as provided in subsection (5).

(5) (a) Except as provided for in subsection (5) (b), payment for the performance of work may be based on the following criteria:

- (i) knowledge and skill;
- (ii) attitude toward authority;

- (iii) physical effort;
- (iv) responsibility for equipment and materials; and
- (v) regard for safety of others.

(b) The maximum rate of pay must be determined by the appropriation established for the program, except that an inmate employed in a federally certified prison industries program must be paid at a rate not less than the rate paid for similar work in the locality where the inmate performs the work.

(6) Premiums for workers' compensation and occupational disease coverage for federally certified prison industries programs must be paid by the prison industries program or by the department of corrections. If the department of corrections pays the premium, reimbursement for premium payments for workers' compensation and occupational disease coverage must be made to the department of corrections by the private company contracting with the federally certified prison industries program for services and products.

(7) Inmates not working in a federally certified prison industries training program are not employees, either public or private, and employment rights accorded other classes of workers do not apply to the inmates. Inmates working in a federally certified prison industry program are entitled to coverage and benefits as provided in 39-71-744.

(8) Able-bodied persons committed to a state prison as adult offenders must be required to perform work as provided for by the department of corrections, including the manufacture of products or the rendering of services. In order to ensure the public safety, the department may secure inmates performing work."

NEW SECTION. **Section 9. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to offenders who have an unpaid restitution obligation on [the effective date of this act].

- END -

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DUANE GRIMES**, on March 17, 2003 at 10 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Duane Grimes, Chairman (R)
Sen. Dan McGee, Vice Chairman (R)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jeff Mangan (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Mike Wheat (D)

Members Excused: None.

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 220, HB 246, HB 284, 3/5/2003
Executive Action: HB 246, HB 127

HEARING ON HB 220

Sponsor: REP. JEFF LASZLOFFY, HD 22, LAUREL

Proponents: Diana Koch, Legal Counsel, Department of
Corrections (DOC)
Rhonda Schaffer, DOC
Bill Slaughter, Director of the DOC
Steve Hollingshead, Victim
Mike Mahoney, Warden at the Montana State Prison
Matthew Dale, Office of Victim's Services and
Restorative Justice, Department of Justice
Alene Moss, Crime Victim's Advisory Council
Anita Richards, Victim
Mike Tuschette, DOC
Beth Satre, Montana Coalition Against Domestic and
Sexual Violence
Bill Dove, Montana Police Protective Association
Jim Smith, Montana County Attorneys Association

Opponents: None

Informational Witnesses:

Russ Hyatt, Bureau Chief DOR Accounts Receivable
and Collections

Opening Statement by Sponsor:

REP. JEFF LASZLOFFY, HD 22, LAUREL, introduced HB 220. He stated that while perpetrators of crimes are routinely ordered to pay restitution to their victims, few ever do. The Supreme Court has recently rendered a decision that will wipe out 70 percent of all restitution that is currently owed. Passage of HB 220 has become imperative.

Proponents' Testimony:

Diana Koch, Legal Counsel, Department of Corrections (DOC), reviewed the major points in House Bill 220, EXHIBIT(jus56a01). She further provided a proposed amendment, EXHIBIT(jus56a02).

Rhonda Schaffer, DOC, related that Section 3 of HB 220 would allow the collection of restitution by the DOC. She provided a handout, EXHIBIT(jus56a03). The fiscal department has worked with the Department of Administration to develop queries in the current accounting system which provide the probation and parole officers a monthly report to track payments made to victims.

This has increased the collections for the victim's restitution as the total amount collected for 2001 was \$16,294 and the total collected by the DOC for 2002 was \$30,792.

Bill Slaughter, Director of the DOC, introduced **Nancy Hollingshead.** Ms. Hollingshead's son was killed by a drunk driver. Nancy and Steve Hollingshead could see the offender every day after he came back into the community either at a stop sign or a grocery store. The offender had a smirk on his face because he no longer was under the supervision of the DOC and he still owed restitution but had no intention of paying it and no one could make him pay it. It is time to take the smirk off of the offender's faces. This is not about money. It is about accountability. Offenders work hard to forget their crimes but restitution helps them remember their crimes.

Steve Hollingshead, Victim, stated that his son was killed in 1993. The drunk driver who killed his son had no insurance and the car he had borrowed had no insurance on it. The sentencing judge gave the offender a certain amount of restitution to pay. There was no way to collect while he was in prison. While he was on parole and probation, they were told that he had to make a living. In December of 1999, he was discharged from the prison system. They went to the judge, the county attorney, and the clerk of records to seek restitution. No one could tell them what to do to collect restitution. They have been told there are good laws on the books but they do need fine tuning. They disagree. The laws do not need fine tuning but they do need replacing.

Mike Mahoney, Warden at the Montana State Prison, rose in support of HB 220. This bill is therapeutic for the victims and the offenders.

Matthew Dale, Office of Victim's Services and Restorative Justice, Department of Justice, stated they have a full-time restitution officer. His department administers the Crime Victim Compensation Fund. This bill will strengthen their hand and help them to hold victim's accountable as well as help to enforce victim rights.

Alene Moss, Crime Victim's Advisory Council, rose in support of HB 220. On June 22, 1998, her 19 year-old daughter was killed and her 18 year-old daughter barely survived an accident. The offender was also without insurance and they had to pay all the expenses. They have found the restitution laws are not effective for the victims. Offenders need to be more responsible and accountable for their actions and the toll they make upon people's lives. The obligation to pay full restitution should

remain with the offender until he dies and beyond. The DOC should collect the felony restitution until full restitution is paid, even after the offender has completed supervision. The laws allowing victims to be reimbursed for future medical and counseling expenses, due to the injury by the offender, need to be revised. Interception of state and federal tax refunds should take place and the funds should be disbursed through the Department of Revenue to the collecting agencies to be credited for restitution.

Anita Richards, Victim, stated that they have been working on this issue for the past six years. There are various restitution laws on the books but they do not work.

{Tape: 1; Side: B}

Mike Tuschette, DOC, rose in support of HB 220.

Beth Satre, Montana Coalition Against Domestic and Sexual Violence, rose in support of HB 220. She provided an e-mail from **Kit Hunter** from Kalispell, **EXHIBIT(jus56a04)**.

Bill Dove, Montana Police Protective Association, rose in support of HB 220.

Jim Smith, Montana County Attorneys Association, rose in support of HB 220. A uniform standard system across the 56 counties in the state would be better than the fragmented system currently in place. This will involve a lot of work for the DOC.

Opponents' Testimony: None

Informational Witnesses:

Russ Hyatt, Bureau Chief DOR Accounts Receivable and Collections, was available to answer questions regarding HB 220.

Questions from Committee Members and Responses:

SEN. BRENT CROMLEY remarked there are debts which are non-dischargeable in bankruptcy including deaths incurred as the result of an intoxicated driving offenses. He questioned whether restitution obligations were non-dischargeable. **Ms. Koch** claimed there is a Montana case, **State v. Woods**, that indicates restitution is not dischargeable in bankruptcy.

Closing by Sponsor:

REP. LASZLOFFY closed on HB 220.

MONTANA SENATE
2003 LEGISLATURE
JUDICIARY COMMITTEE
ATTENDANCE

DATE 3-17-03

NAME	PRESENT	EXCUSED	ABSENT
SEN. BRENT CROMLEY	✓		
SEN. AUBYN CURTISS	✓		
SEN. JEFF MANGAN	✓		
SEN. JERRY O'NEIL	✓		
SEN. GERALD PEASE	✓		
SEN. GARY PERRY	✓		
SEN. MIKE WHEAT	✓		
SEN. DAN MCGEE, VICE CHAIRMAN	✓		
SEN. DUANE GRIMES, CHAIRMAN	✓		

MAJOR POINTS IN HOUSE BILL 220 RESTITUTION

This bill primarily overturns Supreme Court opinions based on statutes.

1. Section 1:

- a. Corrects a drafting error made in the 1999 Session. The Court pointed out this drafting error in *State v. Horton*, 2001 MT 100, ¶ 28, n.3, 305 Mont 242, 249. It said,

When the 1999 Legislature amended 46-18-201, MCA, it renumbered portions of the statute. While a deferred imposition of sentence is still discussed in subsection 1, suspended execution of sentence is now discussed in subsection (2). However, the Legislature did not amend the subsection on restitution. That subsection still states: "In addition to any penalties imposed pursuant to *subsection (1)*" (1999) (emphasis added). Hence, under this statute, a district court can only require **restitution** in cases involving deferred imposition of sentence and not in cases involving suspended execution of sentence.

- b. Clarifies common misconception that restitution can only be a condition of probation or parole; so if judge sends offender to prison, offender believes he/she does not have to pay restitution while in prison.

2. Section 2; pg. 4 of bill

- a. Clarifies that the obligation to pay full restitution remains with the offender until it is paid even if the offender dies; (victim can collect from offender's estate)
- b. Has the DOC instead of clerks of court collect felony restitution; DOC engaged in a pilot project in Butte to see if this works and the results are favorable;
- c. DOC will collect until full restitution is paid, even after offender is off supervision or not incarcerated; DOC can contract with a governmental agency or private entity to collect restitution. This gives victims someone to help them collect restitution after supervision ends.
- d. This currently says an offender will remain "under state supervision" until restitution is paid. That was a mistake and **needs to be amended out**.

3. Section 3. pg. 4-5

SENATE JUDICIARY

Exhibit No. 1

Date 3-17-03

Bill No. HB 220 PAGE 1

- a. Allows prosecutors and Defendants to plea bargain for payment of restitution (Prosecutor will dismiss a charge if Defendant agrees in a plea bargain to pay the restitution from that dismissed charge.) Prosecutors had been doing this, but the Supreme Court announced in *State v. Horton* that a strict reading of the statute prohibits the practice. [In *State v. Horton* the prosecutor of Park County charged Horton with felony DUI and felony failure to pay child support – he owed \$47,000 in back support. The prosecutor agreed in a plea bargain to dismiss the felony nonsupport charge if Horton would agree to pay the \$47,000 of back child support he owed. Horton agreed, but then appealed the order that he pay the child support. The Court said the statute only allowed the judge to order restitution to a victim “of the offense” – in other words, the offense to which he pled guilty, the DUI. The Court struck Horton’s obligation to pay the \$47,000 as restitution.] This bill re-words the statute in this section and Section 4 to allow it.
- b. Deletes requirement that P&P officer must submit *documentation* of offender’s future ability to pay restitution. This requirement is now in statute although it is impossible to provide *documentation* that will make a prediction about the offender’s means to pay restitution in the future. The Court says “district courts are not authorized to order restitution until all statutory requirements are satisfied.” *State v. Hilgers*, 1999 MT 284, 297 Mont. 23, 989 P.2d 866. This is so, even if the Defendant, like Hilgers, entered into a plea bargain to pay a specific amount of restitution, the Court said. The Court did not say, but also true is that the district court must have documentation even if there is no reason for it other than the statute requires it. Several times in the restitution statutes, it says the Court **must** order full restitution, so why does the court need this documentation???

4. Section 4; pg 5.

- a. Change on line 22 allows victims to be fully reimbursed for their loss. Supreme Court said victims could not receive what it would cost them to rebuild a garage the offender destroyed. *State v. Pritchett*, 2000 MT 261, 11 P.3d 539. This statutorily changes this ruling and is fair to victims.
- b. Allows a victim to be reimbursed for future medical/counseling expenses due to injury by offender. Courts have ordered this in the past despite the fact they have no statutory authority to do it. This allows judges to do it legally now.
- c. Pg. 6, Lines 12 & 13 reiterate that plea bargains for restitution are O.K.

5. Section 5; pg. 6

- a. Deletes the requirement that the judge set a monthly amount of restitution at time of sentencing. Judge was supposed to have a crystal ball to discern what amount the offender could pay per month for the rest of the sentence. This changes that and simply states that the P&P officer who is supervising the offender takes the total amount of restitution owed and divides it by the number of months remaining on the offender's sentence.
- b. There is a fail-safe mechanism in 46-18-203 that says a judge cannot revoke an offender merely because the offender could not pay restitution.
- c. Allows P&P officers to set amount of monthly restitution payments and move amount up or down by 10%.
- d. Allows DOC to take money for restitution from inmates while they are incarcerated.
- e. Allows the DOR to intercept offenders' income tax refunds to pay restitution.

6. Section 7; pg. 9

- a. Just makes some changes to the mechanics of withholding for inmates who work in prison industries.

CD-ROM Draft Copy

Last printed 3/17/2003 8:36 AM

Amendments to HB 220.doc

Amendments to House Bill No. 222
3rd Reading Copy

For the Senate Judiciary Committee

Prepared by Diana L. Koch, Department of Corrections

1. Page 4, line 12.
Following: "report"
Strike: the board of crime control
Insert: the Crime Victim Compensation Program.
2. Page 5, Line 3.
Following: "parole."
Delete: the entire sentence.

-END-

SENATE JUDICIARY
Exhibit No. 2
Date 3-17-03
Bill No. HB 220

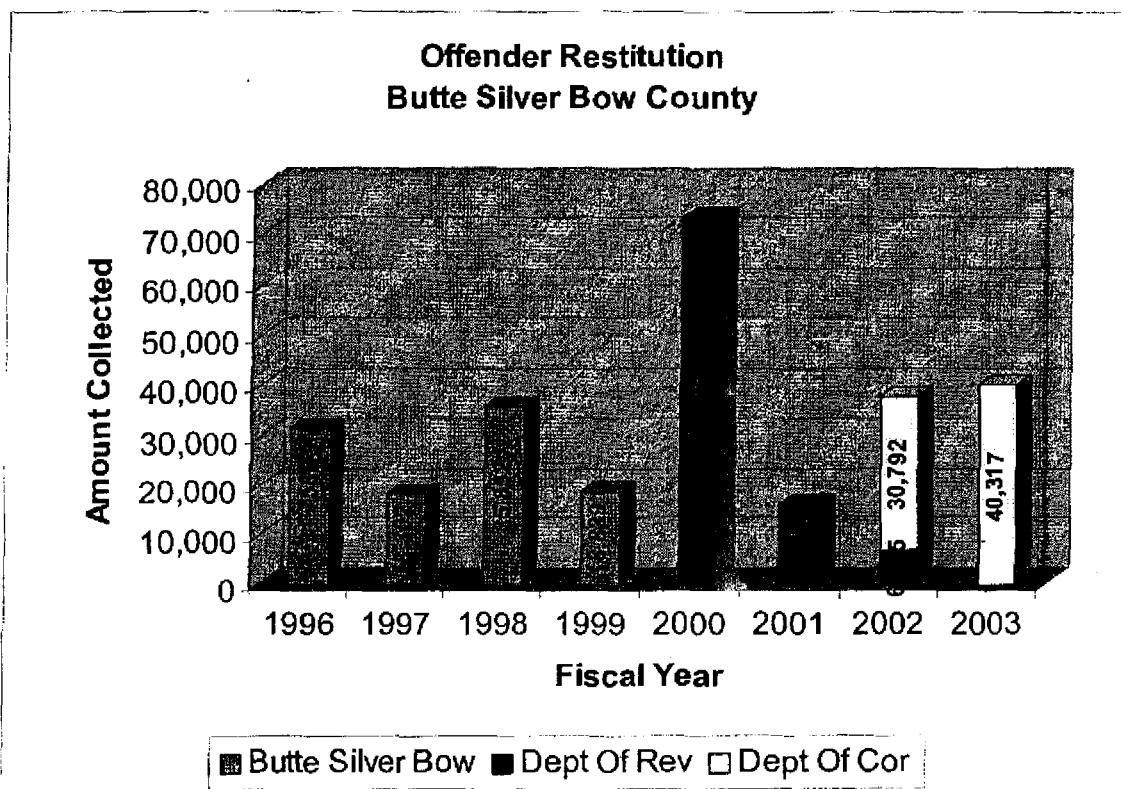
Offender Restitution Butte Silver Bow Pilot Project

HISTORY:

Butte Silver Bow County District Court was responsible for collecting offender restitution. On November 30, 1999 the county, Department of Revenue and the Department of Corrections entered into the Restitution Accord, whereby Department of Revenue started collecting the restitution on behalf of the county. On November 26, 2001 the Restitution Accord was terminated and the Department of Corrections started collecting the restitution on behalf of the county.

FINANCIAL INFORMATION:

The following chart identifies the amount of restitution that was collected by fiscal year and by which parties. Please note: In fiscal year 2000, one offender made a large restitution payment, which skewed the results of the project. Also, fiscal year 2003 is only the results through 1/16/2003, which only represents 6 months of the year.



SENATE JUDICIARY

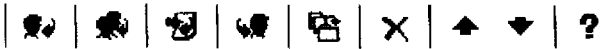
Exhibit No. 3

Date 3-17-03

Bill No. HB220

January 21, 2003

I:\FISCAL\BudgetBureau\2003 Leg session\Offender Restitution.doc



Kit Hunter -
from Kalispell MT



From: Kit Hunter [SMTP:kitblend@centurytel.net]

To: 'Hilander, Sally'

Cc:

Subject: RE: House Bill 220 UPDATE

Sent: 3/14/2003 6:36 PM

Importance: Normal

*mentioned by the Cook
blows up again?*

Sally Please relay these thoughts to the counsel....My Wife and I were the victims of a burglary and a devastating fire as a result of Mr. Pritchett's entry into our garage to steal guns. For the last four and one half years I have watched as the state and county officials tried to hold Mr. Pritchett accountable even as per the terms of his restitution and parole. To date we have received approximately \$850.00 out of a \$37,000.00 Claim (5,000.00 for us, the rest to the insurance). The actual replacement cost loss was around 65,000.00. That was the first ordered restitution, it was appealed and the State Supreme Court ordered the defendant to pay "Actual Costs"... This bill addresses that issue as the only just resolution for victims is to be paid back full replacement costs of the loss. After all that is exactly the value of the loss in order to restore the property to the original state before the crime. Having the defendant responsible to pay until death and beyond to his estate is also critical as in my case, the only real hope we have is what value might be in the estate after Pritchett's death.

I also think it is critical to get the responsibility of monitoring restitution payment out of the probation department's hands and into the correction department where hopefully there is some hope of accountability. The needs to be actual follow-up and monitoring of these people and they need to pay whatever can possibly be paid rather than getting away with less than they spend on cigarettes on a monthly basis. I thank-you for your time, and your careful consideration on this matter, and I urge you to vote to bring this bill to the floor for passage.

-----Original Message-----

From: Hilander, Sally [mailto:shilander@state.mt.us]

Sent: Tuesday, March 11, 2003 4:37 PM

To: 'kitblend@centurytel.net'

Subject: RE: House Bill 220 UPDATE

Hi Kit: I'll forward your concerns to our legal counsel. I think the hearing is at 10 a.m. Monday March 17, rather than 9. I'll let you know for sure as soon as they quit changing it!!!

-----Original Message-----

From: Kit Hunter [mailto:kitblend@centurytel.net]

Sent: Tuesday, March 11, 2003 4:17 PM

To: 'Hilander, Sally'

Subject: RE: House Bill 220 UPDATE

SENATE JOURNAL

Exhibit No. 4

Date 3-17-03

Bill No. HB 220

DATE March 17-2003

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 220 - HB 246 - HB 284

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Russ Hyatt	444-5697	DOR	HB 220	INFO ✓	
John Conna	444-5791	DOJ / AG	HB 246	—	
Steve Hollingshead	628-2121	Victims MACOP	HB 220	✓	
Jim Kember	442-8684	MPPA	HB 246	✓	
Anita Richards	677-2496	Victims	H 220	✓	
Aleene Moss	434-2888	Victims	H 220		
Rhonda Schaffer	444-4939	MDOC	HB 220	✓	
Beth Sizer	403-7794	Wit coalition Against Domestic & Sexual Violence	HB 220	✓	
Julie Ippolito	431-3499	MADD	HB 284	X	
MATTHEW LAKE	444 1907	CRIME VICTIMS COMF	HB 220	X	
Cindy Paradis	444-7847	Crime Victims comp	HB 220	X	
Bill Robinson, MD	586-8510	Emergency Physician	HB 284	X	
Jim Smith		County Atty 3	220	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE _____

SENATE COMMITTEE ON _____

BILLS BEING HEARD TODAY: _____

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Bill Dowe	582-2021	MPPA	HB 220	✓	
Beda Lovitt	439-9122	MT Med Assn	HB 284	✓	
Bill Dowe	582-2021	MPPA	HB 246	✓	
DIANA KOCH	444-9593	DOC	HB 220	✓	
Beth Breuneman	443-8590	MT ACLU	HB 46	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DUANE GRIMES**, on March 19, 2003 at
8:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Duane Grimes, Chairman (R)
Sen. Dan McGee, Vice Chairman (R)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jeff Mangan (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Mike Wheat (D)

Members Excused: None.

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 404, HB 61, HB 247, HB 448,
3/14/2003
Executive Action: HB 66, HB 220, HB 256, HB 480, HB
17, HB 284, HB 618

EXECUTIVE ACTION ON HB 66

Motion/Vote: SEN. MIKE WHEAT moved that SB 56 BE INDEFINITELY POSTPONED. Motion carried with SEN. BRENT CROMLEY voting no.

EXECUTIVE ACTION ON HB 220

Motion: SEN. DAN MCGEE moved that HB 220 BE CONCURRED IN.

Substitute Motion: SEN. MCGEE moved that HB 220 BE AMENDED, HB022 001.av1., EXHIBIT(jus58a01).

Discussion:

Ms. Lane noted that HB 220 conflicted with SB 10. The amendment addressed the conflict.

Vote: The motion carried unanimously.

Substitute Motion: SEN. MCGEE moved that HB 220 BE AMENDED, HB022 002.av1, EXHIBIT(jus58a02).

Discussion:

CHAIRMAN DUANE GRIMES remarked that the notice and copy of the report would be provided to the Office of Victim's Services. The amendment would strike all the language between lines 4 and 6 on page 5.

Ms. Lane explained this would be a policy change. It was suggested by Diana Koch, Chief Legal Officer, Department of Corrections (DOC).

SEN. JERRY O'NEIL claimed if the felony offender was left under state supervision, based upon payment of restitution, this would create a debtor's prison. By striking the language, that concern would be alleviated.

Vote: The motion carried unanimously.

Motion: SEN. MCGEE moved that HB 220 BE CONCURRED IN AS AMENDED.

Discussion:

SEN. AUBYN CURTISS raised a concern about the fiscal note. She believed the DOC would need to hire more FTEs. She understood

the fiscal note to state they were looking for 10 percent of what has been received by the counties.

CHAIRMAN GRIMES noted that restitution has been identified as being critically important. A mechanism is necessary to provide that the money be returned to the victims.

SEN. MCGEE was reluctantly willing to vote for the bill and review the outcome.

Vote: Motion carried unanimously.

EXECUTIVE ACTION ON HB 256

Motion/Vote: **SEN. GARY PERRY** moved that the Committee **RECONSIDER ITS ACTION ON HB 256**. Motion carried unanimously.

Motion: **SEN. MCGEE** moved that **HB 256 BE CONCURRED IN**.

Substitute Motion: **SEN. MCGEE** moved that **HB 256 AMENDED, HB025601.avl., EXHIBIT(jus58a03)**.

Discussion:

CHAIRMAN GRIMES remarked a one-mile boundary would be in place if there was no agreement between campus security and the city police department. **Bill Johnston, University of Montana**, explained one of the concerns was the situation if an agreement had not been reached on a campus. If this was the case, the situation would revert to current law and this would be the one-mile jurisdiction. If the city chief and the campus chief negotiated and reached an agreement, the new agreement would supersede the existing language.

SEN. CROMLEY pointed out the current language is working very well. The amendment would allow the campus security to have primary jurisdiction in non-campus related activities, if an agreement was reached. He did not believe there were any non-campus related activities in which the campus security should have primary jurisdiction. **Mr. Johnston** maintained this was an item that would be worked out with the campus chief of security and the city chief of police. They would determine primary jurisdiction. This may involve a noise complaint. It could be difficult for the city police to travel to the location to visit with the occupants. If there was a burglary, the response would be to 911 and they would dispatch. If the city police were all called out and were unable to respond, campus security would then respond.

**MONTANA SENATE
2003 LEGISLATURE
JUDICIARY COMMITTEE
ATTENDANCE**

DATE 3-19-03

NAME	PRESENT	EXCUSED	ABSENT
SEN. BRENT CROMLEY	✓		
SEN. AUBYN CURTISS	✓		
SEN. JEFF MANGAN	✓		
SEN. JERRY O'NEIL	✓		
SEN. GERALD PEASE	✓		
SEN. GARY PERRY	✓		
SEN. MIKE WHEAT	✓		
SEN. DAN MCGEE, VICE CHAIRMAN	✓		
SEN. DUANE GRIMES, CHAIRMAN	✓		

Amendments to House Bill No. 220
3rd Reading Copy

For the Senate Judiciary Committee

Prepared by Valencia Lane
March 13, 2003 (4:24pm)

1. Page 11, line 26.

Following: line 25

Insert: "NEW SECTION. Section 9. Coordination instruction. If Senate Bill No. 10 and [this act] are both passed and approved, then [section 92] of Senate Bill No. 10, amending 46-18-242, is void."

Renumber: subsequent section

- END -

SENATE JUDICIARY
Exhibit No. 1
Date 3-19-03
Bill No. H B220

Amendments to House Bill No. 220
3rd Reading Copy

For the Senate Judiciary Committee

Prepared by Valencia Lane
March 17, 2003 (2:43pm)

*suggested by
Diana Koch
DOC
(put into proper
form)
vj*

1. Page 4, line 12.

Following: "to the"

Strike: "board of crime control"

Insert: "office of victims services in the department of justice"

2. Page 5, line 3 through line 6.

Following: "parole" on line 3

Strike: remainder of line 3 through "expired" on line 6

- END -

SENATE JUDICIARY
Exhibit No. 2
Date 3-19-03
Bill No. HB220



SENATE STANDING COMMITTEE REPORT

March 19, 2003

Page 1 of 1

Mr. President:

We, your committee on **Judiciary** recommend that **House Bill 220** (third reading copy, blue) be concurred in as amended.

Signed:

Senator Duane Grimes, Chair

To be carried by Senator Dan McGee

And, that such amendments read:

1. Page 4, line 12.

Following: "to the"

Strike: "board of crime control"

Insert: "office of victims services in the department of justice"

2. Page 5, line 3 through line 6.

Following: "parole" on line 3

Strike: remainder of line 3 through "expired" on line 6

3. Page 11, line 26.

Following: line 25

Insert: "NEW SECTION. Section 9. Coordination instruction. If Senate Bill No. 10 and [this act] are both passed and approved, then [section 92] of Senate Bill No. 10, amending 46-18-242, is void."

Renumber: subsequent section

- END -

Committee Vote:

Yes 9, No 0.

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*581326
741*

Noennig, A. Olson, B. Olson, Parker, Pattison, Peterson, Raser, Rice, Ripley, Roberts, Rome, Ross, Ryan, Sales, Schruppf, Shockley, Sinrud, Small-Eastman, Smith, Steinbeisser, Stoker, Thomas, Wagman, Waitschies, Wanzenried, Weiss, Wilson, Windy Boy, Witt, Younkin, Mr. Speaker.

Total 93

Noes: Bixby, Jayne.

Total 2

Excused: Buzzas, Franklin, Fuchs, Hedges, Keane.

Total 5

Absent or not voting: None.

Total 0

HB 220 (Sixty-first Legislative Day - Second Reading - Senate) - Senator McGee moved HB 220 be concurred in. Motion carried unanimously.

HB 220 (Sixty-second Legislative Day - Third Reading - Senate) , as amended by the Senate, concurred in as follows:

Yeas: Anderson, Bales, Barkus, Black, Bohlinger, Butcher, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, DePratu, Ellingson, Elliott, Esp, Gebhardt, Glaser, Grimes, Hansen, Harrington, Johnson, Kitzenberg, Laible, Mahlum, McCarthy, McGee, McNutt, Nelson, O'Neil, Pease, Perry, Roush, Ryan, Schmidt, Shea, Squires, Stapleton, Stonington, Story, Tash, Taylor, Tester, Thomas, Toole, Tropila, Wheat, Zook, Mr. President.

Total 48

Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: Mangan, Sprague.

Total 2

HB 220 (Seventy-fourth Legislative Day - Second Reading - House) - Senate Amendments - Representative Laszloffy moved Senate amendments to HB 220 be concurred in. Motion carried as follows:

Ayes: Andersen, Ballantyne, Balyeat, Barrett, Becker, Bergren, Bitney, Bookout-Reinicke, Branae, D. Brown, R. Brown, Brueggeman, Buzzas, Callahan, Carney, E. Clark, P. Clark, Cohenour, Cyr, Devlin, Dickenson, Dowell, Erickson, Everett, Facey, Fisher, Forrester, Franklin, Fritz, Fuchs, Gallik, Gallus, Galvin-Halcro, Gibson, Gillan, Golie, Gutsche, Haines, Harris, Hawk, Hedges, Hurwitz, Jackson, Jacobson, Jent, Juneau, Kasten, Kaufmann, Keane, Lake, Lambert, Lange, Laslovich, Laszloffy, Lawson, Lehman, Lenhart, Lewis, Lindeen, Malcolm, Matthews, McKenney, Mendenhall, Morgan, Musgrove, Newman, Noennig, A. Olson, B. Olson, Parker, Pattison, Peterson, Raser, Rice, Ripley, Roberts, Rome, Ross, Ryan, Sales, Schruppf, Shockley, Sinrud, Small-Eastman, Smith, Steinbeisser, Stoker, Thomas, Wagman, Waitschies, Wanzenried, Weiss, Wilson, Windy Boy, Witt, Younkin, Mr. Speaker.

Total 97

Noes: Bixby, Jayne.

Total 2

Voted Absentee: Facey, Windy Boy, Ayes.

Excused: None.

Total 0

Absent or not voting: Maedje.

Total 1

HB 220 (Seventy-fifth Legislative Day - Third Reading - House) , as amended by the Senate, passed as follows:

Ayes: Andersen, Ballantyne, Balyeat, Barrett, Becker, Bergren, Bitney, Bookout-Reinicke, Branae, D. Brown, R. Brown, Brueggeman, Buzzas, Callahan, Carney, E. Clark, P. Clark, Cohenour, Cyr, Devlin, Dickenson, Dowell, Erickson, Everett, Facey, Fisher, Forrester, Franklin, Fritz, Fuchs, Gallik, Galvin-Halcro, Gibson, Gillan, Golie, Gutsche, Haines, Harris, Hawk, Hedges, Hurwitz, Jackson, Jacobson, Jent, Kasten, Kaufmann, Keane, Lake, Lambert, Lange, Laslovich, Laszloffy, Lawson, Lehman, Lenhart, Lewis, Lindeen, Maedje, Malcolm, Matthews, McKenney, Mendenhall, Morgan, Musgrove, Newman, Noennig, A. Olson, B. Olson, Parker, Pattison, Peterson, Raser, Rice, Ripley, Roberts, Rome, Ross, Ryan, Sales, Schrupf, Shockley, Sinrud, Small-Eastman, Smith, Steinbeisser, Stoker, Thomas, Wagman, Waitschies, Wanzenried, Weiss, Wilson, Windy Boy, Witt, Younklin, Mr. Speaker.

Total 96

Noes: Bixby, Gallus, Jayne, Juneau.

Total 4

Excused: None.

Total 0

Absent or not voting: None.

Total 0

HB 222 (Fortieth Legislative Day - Second Reading - House) - Representative Parker moved HB 222 do pass. Motion carried as follows:

Ayes: Andersen, Ballantyne, Balyeat, Barrett, Becker, Bergren, Bitney, Bixby, Bookout-Reinicke, Branae, D. Brown, R. Brown, Brueggeman, Buzzas, Callahan, Carney, E. Clark, P. Clark, Cohenour, Cyr, Devlin, Dickenson, Dowell, Everett, Facey, Fisher, Forrester, Franklin, Fritz, Fuchs, Gallik, Gallus, Galvin-Halcro, Gibson, Gillan, Golie, Gutsche, Haines, Harris, Hawk, Hedges, Hurwitz, Jackson, Jacobson, Jent, Juneau, Kasten, Kaufmann, Keane, Lake, Lambert, Lange, Laslovich, Laszloffy, Lawson, Lehman, Lenhart, Lewis, Lindeen, Matthews, McKenney, Mendenhall, Morgan, Musgrove, Newman, Noennig, A. Olson, B. Olson, Parker, Pattison, Peterson, Raser, Rice, Ripley, Roberts, Rome, Ross, Ryan, Sales, Schrupf, Shockley, Sinrud, Small-Eastman, Smith, Steinbeisser, Stoker, Thomas, Wagman, Waitschies, Wanzenried, Weiss, Wilson, Windy Boy, Witt, Younklin, Mr. Speaker.

Total 96

Noes: Jayne.

Total 1

Voted Absentee: Branae, Buzzas, Callahan, Fritz, Jent, Ayes.

Excused: None.

Total 0

Absent or not voting: Erickson, Maedje, Malcolm.

Total 3

HB 222 (Forty-first Legislative Day - Third Reading - House) passed as follows:

Ayes: Andersen, Ballantyne, Balyeat, Barrett, Becker, Bergren, Bitney, Bixby, Bookout-Reinicke, Branae, D. Brown, R. Brown, Brueggeman, Buzzas, Callahan, Carney, E. Clark, P. Clark, Cohenour, Cyr, Devlin, Dickenson, Dowell, Erickson, Everett, Facey, Fisher, Forrester, Franklin, Fritz, Fuchs, Gallik, Gallus, Gibson, Gillan, Golie, Gutsche, Haines, Harris, Hawk, Hedges, Hurwitz, Jackson, Jacobson, Jayne, Jent, Juneau, Kasten, Kaufmann, Keane, Lake, Lambert, Lange, Laslovich, Laszloffy, Lawson, Lehman, Lenhart, Lewis, Lindeen, Maedje, Malcolm, Matthews, McKenney, Mendenhall, Morgan, Musgrove, Newman, Noennig, A. Olson, B. Olson, Parker, Pattison, Peterson, Raser, Rice, Ripley, Roberts, Rome, Ross, Ryan, Sales, Schrupf, Shockley, Sinrud, Small-Eastman, Smith, Steinbeisser, Stoker, Thomas, Wagman, Waitschies, Wanzenried, Weiss, Wilson, Windy Boy, Witt, Younklin, Mr. Speaker.

Total 99

Noes: None.

Total 0



AN ACT REVISING AND CLARIFYING THE LAWS PROVIDING FOR RESTITUTION BY CRIMINALS TO ADDRESS COURT OPINIONS; ENSURING THAT THE DUTY TO PAY CONTINUES TO EXIST UNTIL RESTITUTION IS FULLY PAID; ALLOWING THE STATE TO CONTRACT WITH A PRIVATE ENTITY OR GOVERNMENTAL AGENCY FOR THE COLLECTION OF RESTITUTION PAYMENTS; PROVIDING FOR FULL REPLACEMENT VALUE RESTITUTION; ADDING METHODS TO ENSURE PAYMENT OF RESTITUTION; CHANGING PROCEDURES FOR SUPERVISION OF THE PAYMENT OF RESTITUTION; AMENDING SECTIONS 46-18-201, 46-18-237, 46-18-241, 46-18-242, 46-18-243, 46-18-244, 46-18-245, AND 53-30-132, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition of sentence, except as otherwise specifically provided by statute, for a period:

(i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

(ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.

(b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(2) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend execution

of sentence, except as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.

(3) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may impose a sentence that may include:

(a) a fine as provided by law for the offense;

(b) payment of costs, as provided in 46-18-232, or payment of costs of court-appointed counsel as provided in 46-8-113;

(c) a term of incarceration at a county detention center or state prison, as provided in Title 45, for the offense;

(d) commitment of:

(i) an offender not referred to in subsection (3)(d)(ii) to the department of corrections, with a recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years of the commitment to the department of corrections must be suspended; or

(ii) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in an appropriate correctional facility or program;

(e) with the approval of the facility or program, placement of the offender in a community corrections facility or program as provided in 53-30-321;

(f) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, placement of the offender in a prerelease center or prerelease program for a period not to exceed 1 year;

(g) chemical treatment of sex offenders, as provided in 45-5-512, if applicable, that is paid for by and for a period of time determined by the department of corrections, but not exceeding the period of state supervision of the person; or

(h) any combination of subsections (2) through (3)(g).

(4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the sentencing judge may impose upon the offender any reasonable restrictions or conditions during the period of the deferred imposition or suspension

of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) may include but are not limited to: HB0220

- (a) limited release during employment hours as provided in 46-18-701;
- (b) incarceration in a detention center not exceeding 180 days;
- (c) conditions for probation;
- (d) payment of the costs of confinement;
- (e) payment of a fine as provided in 46-18-231;
- (f) payment of costs as provided in 46-18-232 and 46-18-233;
- (g) payment of costs of court-appointed counsel as provided in 46-8-113;
- (h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;
- (i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;
- (j) community service;
- (k) home arrest as provided in Title 46, chapter 18, part 10;
- (l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;
- (m) with the approval of the department of corrections and with a signed statement from an offender that the offender's participation in the boot camp incarceration program is voluntary, an order that the offender complete the boot camp incarceration program established pursuant to 53-30-403;
- (n) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society; or
- (o) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(n).

(5) In addition to any other penalties imposed ~~pursuant to subsection (1)~~, if a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that ~~the~~ a victim of the offense, as defined in 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment of full restitution to the victim, as provided

in 46-18-241 through 46-18-249, whether or not any part of the sentence is deferred or suspended.

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(6) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(7) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise."

Section 2. Section 46-18-237, MCA, is amended to read:

"46-18-237. Garnishment -- report by supervising authority. (1) If the department of corrections becomes aware that a ~~prisoner~~ person while incarcerated under the legal custody of the department of corrections or a person supervised by the department is entitled to receive money from any source, the ~~prisoner's~~ person's supervising authority may prepare a report identifying:

(a) the total costs incurred by the state or county during the ~~prisoner's~~ person's incarceration;

(b) the criminal sentences imposed upon the ~~prisoner~~ person, including:

(i) the amount of restitution, if any, ordered in each sentence;

(ii) the name and current address of each victim or other person to whom restitution is owed;

(iii) the amount of restitution paid by the ~~prisoner~~ person; and

(iv) the amount of restitution currently owed by the ~~prisoner~~ person for each sentence;

(c) the amount of any child support owed by the ~~prisoner~~ person.

(2) The supervising authority shall provide notice and a copy of the report to the ~~board of crime control~~ office of victims services in the department of justice and the county attorney for the county in which the ~~prisoner~~ person was sentenced, either of whom may submit the report along with a petition for garnishment to the court that sentenced the ~~prisoner~~ person. The court may order garnishment of the ~~prisoner's~~ person's money for the payment of restitution, child support, and per diem costs of incarceration owed by the ~~prisoner~~ person. Upon receipt of the petition, the court shall provide a copy of the report to the ~~prisoner~~ person, who has 15 days following

receipt to file an objection. The court may hold a hearing to consider objections raised by the ~~prisoner~~ person. HB0220

(3) Upon compliance with the provisions of subsections (1) and (2), the court shall determine the amount of restitution, child support, and repayment for per diem costs owed by the ~~prisoner~~ person. The court shall order, up to the amount of money available, payment of an amount equal to the restitution owed by the ~~prisoner~~ person to the person designated under 46-18-245 to supervise the making of restitution payments, any outstanding child support payments to the department of public health and human services for disbursement to the obligee, and per diem costs owed by the ~~prisoner~~ person. All restitution owed by the ~~prisoner~~ person must be paid prior to payment of any child support payments. All child support owed by the ~~prisoner~~ person must be paid prior to the payment of any per diem costs."

Section 3. Section 46-18-241, MCA, is amended to read:

"46-18-241. Condition of restitution. (1) As provided in 46-18-201, a sentencing court shall, as part of the sentence, require an offender to make full restitution to any victim ~~of the offense~~ who has sustained pecuniary loss ~~as a result of the offense~~, including a person suffering an economic loss ~~as a result of the crime~~. The duty to pay full restitution under the sentence remains with the offender or the offender's estate until full restitution is paid and is a condition of any probation or parole.

(2) (a) The court shall require the offender to pay the cost of supervising the payment of restitution, as provided in 46-18-245, if the offender is able to pay, by paying an amount equal to 10% of the amount of restitution ordered, but not less than \$5.

(b) A felony offender shall pay the restitution and cost of supervising the payment of restitution to the department of corrections until the offender has fully paid the restitution and the cost of supervising the payment of restitution. The department shall pay the restitution to the person or entity to whom the court ordered restitution to be paid. The department may contract with a government agency or private entity for the collection of the payments for restitution and the cost of collecting the payments for restitution during the period following state supervision or state custody of the offender. The department shall adopt rules to implement this subsection

(2) (b).

(c) ~~Payment~~ In a misdemeanor case, payment of restitution and of the cost of supervising the payment of restitution must be made to the court, which until the offender has fully paid the restitution and the cost of supervising the payment of restitution. The court shall disburse the money to the entity employing the person ordered to supervise restitution under 46-18-245, which shall disburse the restitution to the person or entity to whom the court ordered restitution to be paid.

(3) If at any time the court finds that, because of circumstances beyond the offender's control, the offender is not able to pay any restitution, the court may order the offender to perform community service during the time that the offender is unable to pay. The offender must be given a credit against restitution due at the rate of the hours of community service times the state minimum wage in effect at the time that the community service is performed."

Section 4. Section 46-18-242, MCA, is amended to read:

"46-18-242. Investigation and report of victim's loss. (1) Whenever the court believes that a victim ~~of the offense~~ may have sustained a pecuniary loss ~~as a result of the offense~~ or whenever the prosecuting attorney requests, the court shall order the probation officer, restitution officer, or other designated person to include in the presentence investigation and report:

(a) ~~documentation~~ a list of the offender's financial resources and future ability to pay restitution assets; and

(b) ~~documentation of an affidavit that specifically describes the victim's pecuniary loss and the replacement value in dollars of the loss, submitted by the victim or by the board of crime control if compensation for the victim's loss has been reimbursed by the state.~~

(2) When a presentence report is not authorized or requested, the court ~~may receive~~ shall accept evidence of the ~~offender's ability to pay~~ and the victim's loss at the time of sentencing."

Section 5. Section 46-18-243, MCA, is amended to read:

"46-18-243. Definitions. For purposes of 46-18-241 through 46-18-249, the

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following definitions apply:

(1) "Pecuniary loss" means:

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(a) all special damages, but not general damages, substantiated by evidence in the record, that a person could recover against the offender in a civil action arising out of the facts or events constituting the offender's criminal activities, including without limitation ~~the money equivalent of loss resulting from property taken, destroyed, broken, or otherwise harmed~~ and out-of-pocket losses, such as medical expenses, loss of income, expenses reasonably incurred in obtaining ordinary and necessary services that the victim would have performed if not injured, expenses reasonably incurred in attending court proceedings related to the commission of the offense, and reasonable expenses related to funeral and burial or crematory services; and

(b) the full replacement cost of property taken, destroyed, harmed, or otherwise devalued as a result of the offender's criminal conduct;

(c) future medical expenses that the victim can reasonably be expected to incur as a result of the offender's criminal conduct, including the cost of psychological counseling, therapy, and treatment; and

~~——(b)(d)~~ (d) reasonable out-of-pocket expenses incurred by the victim in filing charges or in cooperating in the investigation and prosecution of the offense.

(2) (a) "Victim" means:

(i) a person who suffers loss of property, bodily injury, or death as a result of:

(A) the commission of an offense;

(B) the good faith effort to prevent the commission of an offense; or

(C) the good faith effort to apprehend a person reasonably suspected of committing an offense;

(ii) the estate of a deceased or incapacitated victim or a member of the immediate family of a homicide victim;

(iii) a governmental entity that suffers loss of property as a result of the commission of an offense in this state or that incurs costs or losses during the commission or investigation of an escape, as defined in 45-7-306, or during the apprehension or attempted apprehension of the escapee; ~~or~~

(iv) an insurer or surety with a right of subrogation to the extent it has reimbursed the victim of the offense for pecuniary loss; HB0220

(v) the crime victims compensation and assistance program established under Title 53, chapter 9, part 1, to the extent that it has reimbursed a victim for pecuniary loss; and

(vi) any person or entity whom the offender has voluntarily agreed to reimburse as part of a voluntary plea bargain.

(b) Victim does not include a person who is accountable for the crime or accountable for a crime arising from the same transaction."

Section 6. Section 46-18-244, MCA, is amended to read:

"46-18-244. Type and time of payment -- defenses -- ensuring payment. (1) The court shall specify the total amount ~~to be paid and the method and time of payment~~ and ~~may permit payment in installments of restitution that the offender shall pay.~~

(2) ~~In determining the amount, method, and time of each installment payment, the court shall consider the financial resources and future ability of the offender to pay. The court shall provide for payment to a victim of the full amount of the pecuniary loss caused by the offense. The~~ In the proceeding for the determination of the amount of restitution, the offender may assert any defense that the offender could raise in a civil action for the loss sought to be compensated by the restitution order for which the victim seeks compensation.

(3) In addition to other methods of payment, the court may order one or more of the following in order to satisfy the offender's restitution obligation:

(a) forfeiture and sale of the offender's assets under the provisions of Title 25, chapter 13, part 7, unless the court finds, after notice and an opportunity for the offender to be heard, that the assets are reasonably necessary for the offender to sustain a living or support the offender's dependents or unless the state determines that the cost of forfeiture and sale would outweigh the amount available to the victim after sale. If the proceeds of sale exceed the amount of restitution ordered and the costs of forfeiture and sale, any remaining amount must be returned to the offender.

(b) return of any property to the victim;

~~--- (c) payment of up to one-third of the offender's prison earnings.~~

(4) With the consent of the victim and in the discretion of the court, an offender may be ordered to make restitution in services to the victim in lieu of money. HB 220 make restitution to a person designated by the victim, if that person provided services to the victim as a result of the offense.

(5) After a prosecution is commenced and upon petition of the prosecutor, the court may grant a restraining order or injunction, require a satisfactory bond, or take other action if the court finds that the restraining order or injunction, bond, or other action is necessary to preserve property or assets that could be used to satisfy an anticipated restitution order. A hearing must be held on the petition, and any person with an interest in the property is entitled to be heard.

(6) For a felony offense:

(a) during any period that the offender is incarcerated, the department of corrections shall take a percentage, as set by department rule, of any money in any account of the defendant administered by the department and use the money to satisfy any existing restitution obligation;

(b) at the beginning of any period during which the offender is not incarcerated, the offender shall sign a statement allowing any employer of the offender to garnish up to 25% of the offender's compensation and give the garnished amounts to the department of corrections to be used by the department to satisfy any existing restitution obligation; and

(c) during any period that the defendant is on probation or parole, the probation and parole officer shall set a monthly restitution payment amount by dividing the total amount of unpaid restitution by the number of remaining months of probation or parole. The probation and parole officer may adjust the monthly payment up or down by a maximum of 10%, depending on the offender's circumstances.

(7) The department of corrections shall give the department of revenue a copy of the order to pay restitution. If full restitution has not been paid, the department of revenue shall, pursuant to an agreement made under 46-18-241, intercept any state tax refunds and any federal tax refunds, as provided by law, due the offender and transfer the money to the department of corrections for a felony offense and to the sentencing court for a misdemeanor offense for disbursement to the victim. The department of revenue may charge the department of corrections a fee to recover its costs of intercepting

a tax refund. The fee may not exceed the amount charged a state agency for debt collection services under Title 17, chapter 4."

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Section 7. Section 46-18-245, MCA, is amended to read:

"46-18-245. Supervision of payment. ~~The~~ For a felony offense, the court shall order the department of corrections to supervise the payment of restitution. For a misdemeanor offense, the court may order a ~~probation officer,~~ restitution officer, or other designated person to supervise the making of restitution and to report to the court any default in payment. If the victim of a misdemeanor has received compensation under Title 53, chapter 9, the court may also order an employee of the ~~board of crime control~~ office of victims services, as defined in 53-9-103, to supervise the making of restitution and to report to the court any default in payment."

Section 8. Section 53-30-132, MCA, is amended to read:

"53-30-132. Inmate participation and status in prison work programs -- prison industries and vocational training program -- wages and benefits. (1) The department of corrections may:

(a) establish prison industries that will result in the production or manufacture of products and the rendering of services that may be needed by any department or agency of the state or any political subdivision of the state, by any agency of the federal government, by any other states or their political subdivisions, or by nonprofit organizations and that will assist in the rehabilitation of inmates in institutions;

(b) obtain federal certification of specific prison industries programs in order to gain access to interstate markets for prison industries products;

(c) contract with private industry for the sale of goods or components manufactured or produced in shops under its jurisdiction and for the employment of inmates in federally certified prison industries programs;

(d) print catalogs describing goods manufactured or produced by prison industries and distribute the catalogs;

(e) fix the sale price for goods produced or manufactured by prison industries. Prices may not exceed prices existing in the open market for goods of comparable quality.

gl

(f) require a correctional facility to purchase needed goods from other correctional facilities;

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(g) provide for the repair and maintenance of property and equipment of institutions by inmates;

(h) provide for the removal of graffiti from property and equipment of institutions and the removal of litter from the property of institutions, public roads, and public parks by inmates;

(i) provide for construction projects, up to the aggregate sum of \$200,000 for each project, performed by inmates. The department of administration may:

(i) exempt projects authorized by this subsection from the provisions of Title 18, chapter 2, relating to construction, public bidding, bonding, or contracts; and

(ii) exempt inmates who provide labor for those projects from the labor and wage requirements of Title 18, chapter 2, part 4. Inmates providing labor for projects under this subsection must be paid a rate of pay as provided in subsection (5).

(j) provide for the repair and maintenance by prison industries of furniture and equipment of any state agency;

(k) provide for the manufacture by prison industries of motor vehicle license plates and other related articles;

(l) sell manufactured or agricultural products and livestock on the open market;

(m) provide for the manufacture by prison industries of highway, road, and street marking signs for the use of the state or any of its political subdivisions, except when the manufacture of the signs is in violation of a collective bargaining contract;

(n) pay an inmate from receipts from the sale of products produced or manufactured or services rendered in a program in which the inmate is working;

(o) collect 15% of the ~~net~~ gross wages paid to an inmate employed in a federally certified prison industries program, to be deposited in a department restitution fund and used to satisfy any unpaid restitution obligation of the inmate or, if the obligation has been fully paid or no restitution was ordered, for transfer quarterly to the crime victims compensation and assistance program in the department of justice for deposit in the state general fund as provided in Title 53, chapter 9, part 1; and

(p) collect from an inmate employed in a federally certified prison industries program charges for room and board consistent with charges established by the director

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for inmates assigned to prerelease centers.

(2) Except as provided in subsection (3), furniture made in the prison ~~HB0200~~ purchased by state agencies in accordance with the procurement provisions under Title 18, chapter 4. All other prison-made furniture may be sold only through licensed wholesale or retail furniture outlets or through export firms for sale to international markets.

(3) Any state institution, facility, or program operated by the department of corrections may purchase prison-made furniture without complying with the procurement provisions under Title 18, chapter 4.

(4) While engaged in on-the-job training and production, inmates not employed in a federally certified prison industries program may be paid a wage in accordance with subsection (5). Inmates employed in a federally certified prison industries program must be paid as provided in subsection (5).

(5) (a) Except as provided for in subsection (5)(b), payment for the performance of work may be based on the following criteria:

- (i) knowledge and skill;
- (ii) attitude toward authority;
- (iii) physical effort;
- (iv) responsibility for equipment and materials; and
- (v) regard for safety of others.

(b) The maximum rate of pay must be determined by the appropriation established for the program, except that an inmate employed in a federally certified prison industries program must be paid at a rate not less than the rate paid for similar work in the locality where the inmate performs the work.

(6) Premiums for workers' compensation and occupational disease coverage for federally certified prison industries programs must be paid by the prison industries program or by the department of corrections. If the department of corrections pays the premium, reimbursement for premium payments for workers' compensation and occupational disease coverage must be made to the department of corrections by the private company contracting with the federally certified prison industries program for services and products.

(7) Inmates not working in a federally certified prison industries training

program are not employees, either public or private, and employment rights accorded other classes of workers do not apply to the inmates. Inmates working in a federal certified prison industry program are entitled to coverage and benefits as provided in 39-71-744.

(8) Able-bodied persons committed to a state prison as adult offenders must be required to perform work as provided for by the department of corrections, including the manufacture of products or the rendering of services. In order to ensure the public safety, the department may secure inmates performing work."

Section 9. Coordination instruction. If Senate Bill No. 10 and [this act] are both passed and approved, then [section 92] of Senate Bill No. 10, amending 46-18-242, is void.

Section 10. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to offenders who have an unpaid restitution obligation on [the effective date of this act].

- END -

HB 0220, originated in the House. HB0220

I hereby certify that the within bill,

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2016.

President of the Senate

Signed this _____ day
of _____, 2016.

INTRODUCED BY LASZLOFFY

HB0220

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

AN ACT REVISING AND CLARIFYING THE LAWS PROVIDING FOR RESTITUTION BY CRIMINALS TO ADDRESS
HOUSE BILL NO. 220
COURT OPINIONS; ENSURING THAT THE DUTY TO PAY CONTINUES TO EXIST UNTIL RESTITUTION
IS FULLY PAID; ALLOWING THE STATE TO CONTRACT WITH A PRIVATE ENTITY OR GOVERNMENTAL
AGENCY FOR THE COLLECTION OF RESTITUTION PAYMENTS; PROVIDING FOR FULL REPLACEMENT VALUE
RESTITUTION; ADDING METHODS TO ENSURE PAYMENT OF RESTITUTION; CHANGING PROCEDURES FOR
SUPERVISION OF THE PAYMENT OF RESTITUTION; AMENDING SECTIONS 46-18-201, 46-18-237,
46-18-241, 46-18-242, 46-18-243, 46-18-244, 46-18-245, AND 53-30-132, MCA; AND
PROVIDING A RETROACTIVE APPLICABILITY DATE.